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ASSET PURCHASE AGREEMENT

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This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of [____], 200__, is entered into between [____], a [____] corporation ("Buyer"), and [____], a [____] corporation ("Seller").

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RECITALS

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A. Seller desires to sell certain Purchased Assets and Buyer desires to purchase such Purchased Assets and assume certain liabilities, upon the terms and subject to the conditions of this Agreement.

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B. Concurrently with the execution and delivery of this Agreement, Buyer and certain of Seller's Affiliates have entered into the Intellectual Property Purchase and License Agreement, which shall be effective as of the Closing.

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C. Certain terms used in this Agreement are defined in Article I.

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AGREEMENT

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NOW THEREFORE, in consideration of the respective covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

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ARTICLE I
DEFINITIONS, INTERPRETATION

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1.1 Definitions

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(a) Certain Defined Terms.

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As used herein, the following terms shall have the following indicated meanings:

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"Accounts Receivable" shall mean all accounts and notes receivable of the Business (whether current or noncurrent), including the customer accounts receivable (including accounts receivable for any products shipped but not invoiced prior to the Closing Date) that are outstanding as of the Closing Date, and any other rights to receive payments as of the Closing Date, including all trade accounts receivable representing amounts receivable in respect of goods shipped, products sold or services rendered on or prior to the Closing Date, and the full benefit of all securities for such accounts or debts but specifically excluding all accounts, notes and other amounts receivable from Seller or any of Seller's affiliates.

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"Action" shall mean any civil, criminal, judicial or other action, claim, suit, litigation, proceeding, labor dispute, arbitral action, governmental audit, criminal prosecution, investigation or unfair labor practice charge or complaint.

1 "Affiliate" shall mean a person or entity that directly, or indirectly through one or
2 more intermediaries, controls, is controlled by or is under common control with a
3 specified person or entity.

4 "Aggregate Amount" shall mean an amount equal to the Final Purchase Price plus
5 the IP Purchase Price (as defined in the Intellectual Property Purchase and License
6 Agreement) and (c) the Paid-Up Royalty (as defined in the Transition Trademark
7 License).

8 "Ancillary Agreements" shall mean the following: (a) the Assignment and
9 Assumption Agreement and (b) the Bill of Sale.

10 "Assignment and Assumption Agreement" shall mean the Assignment and
11 Assumption Agreement in the form attached hereto as Exhibit A, to be executed at
12 Closing by Buyer and Seller.

13 "Assumed Agreements" shall mean all Contracts to the extent transferable other
14 than the Excluded Contracts.

15 "Assumed Current Liabilities" will mean _____.

16 "Assumed Liabilities" shall mean: (a) all Liabilities accruing, arising out of or
17 related to each of the Assumed Agreements and the Purchased Assets on or after the
18 Closing Date; (b) all Liabilities accruing, arising out of or related to the employment of
19 Transferred Employees or any other events involving any Transferred Employees
20 occurring on or after the Closing Date, and all other Liabilities undertaken by Buyer in
21 accordance with Article IX; (c) all Liabilities accruing, arising out of or related to the
22 ownership and operation of the Business on or after the Closing Date; (d) the Assumed
23 Current Liabilities; and (e) any other Liabilities expressly assumed by Buyer under the
24 terms of this Agreement or the Ancillary Agreements.

25 "Bill of Sale" shall mean the Bill of Sale, in the form attached hereto as Exhibit B,
26 to be executed at Closing by Seller in favor of Buyer.

27 "Books and Records" shall mean all business records, tangible data, documents,
28 files, customer lists, supplier lists, personnel records relating to the Transferred
29 Employees, invoices, sales literature, and all other books and records, in each case which
30 relate exclusively to the Business (collectively, "Information"); *provided, however,* that
31 "Books and Records" shall exclude (i) all tax returns and all worksheets, notes, files or
32 documents primarily related thereto, wherever located, (ii) all documents prepared in
33 connection with the transactions contemplated by this Agreement and all minute books
34 and corporate records of Seller and its Affiliates, (iii) all Information of Seller or Seller's
35 Affiliates to the extent not related to the Business, and (iv) all documents subject to
36 attorney/client privilege or any other applicable privilege.

37 "Business" shall mean Seller's business, as conducted as of the date hereof, of
38 _____.

1 "Buyer's Disclosure Schedule" shall mean a schedule executed and delivered by
2 Buyer to Seller as of the date hereof which sets forth exceptions to the representations
3 and warranties contained in Article V.

4 "Code" shall mean the Internal Revenue Code of 1986, as amended, and the rules
5 and regulations thereunder.

6 "Confidentiality Agreement" shall mean the Confidentiality Agreement, dated as
7 of [____], 200__, between Seller and Buyer.

8 "Contract" shall mean any agreement, contract, obligation, promise, or
9 undertaking that is legally binding to which Seller is a party or is bound and which relates
10 exclusively to the Business, whether oral or written, but excluding all Employee Plans,
11 this Agreement, the Ancillary Agreements, the Intellectual Property Purchase and
12 License Agreement and the Transition Trademark License.

13 "Court Order" shall mean any judgment, decision, consent decree, injunction,
14 ruling or order of any federal, state or local court or governmental agency, department or
15 authority that is binding on any person or its property under applicable law.

16 "Damages" shall mean the amount of any loss, claim, demand, liability,
17 obligations, damage, deficiency, assessment, judgment, penalty, cost or expense
18 (including reasonable attorneys' fees), net of any insurance proceeds or tax benefits
19 received with respect thereto.

20 "Disclosure Schedules" shall mean collectively the Buyer's Disclosure Schedule
21 and the Seller's Disclosure Schedule.

22 "Encumbrance" shall mean any claim, lien, pledge, option, charge, easement,
23 security interest, deed of trust, mortgage, right-of-way, encroachment, building or use
24 restriction, conditional sales agreement, encumbrance or other right of third parties,
25 whether voluntarily incurred or arising by operation of law, including, without limitation,
26 any agreement to give any of the foregoing in the future, and any contingent sale or other
27 title-retention agreement or lease in the nature thereof.

28 "Environmental Laws" shall mean any laws or regulations of any federal, state, or
29 local governmental or regulatory authority enacted or promulgated as of the date of this
30 Agreement which govern the emission, discharge or release of Hazardous Materials. For
31 purposes hereof, the term "Hazardous Materials" shall mean any explosives, radioactive
32 materials, polychlorinated biphenyls, petroleum and petroleum by-products, "hazardous
33 waste," as defined by Section 1004(5) of the Solid Waste Disposal Act, as amended
34 ("SWDA"), and 42 U.S.C. § 6903(5) as enacted as of the date hereof, and regulations of
35 the U.S. Environmental Protection Agency ("EPA") promulgated thereunder as of the
36 date hereof, and "hazardous substances," as defined by Section 101(14) of the
37 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as
38 amended ("CERCLA"), 42 U.S.C. § 9601(14), and EPA regulations promulgated
39 thereunder as of the date hereof.

1 "Equipment Lease" shall mean any lease agreement to which Seller is a party and
2 which relates to Leased Equipment.

3 "Excluded Assets" shall mean, notwithstanding any other provision of this
4 Agreement, the following assets of Seller or Seller's Affiliates:

5 (a) the Excluded Contracts;

6 (b) all cash, bank accounts, cash equivalents and other similar types of
7 investments, certificates of deposit, U.S. Treasury bills and other marketable securities;

8 (c) all raw materials, work in progress, wrapping supply and
9 packaging items, in each case, wherever the same may be located;

10 (d) all refunds, deposits, prepayments or prepaid expenses (including,
11 without limitation, any prepaid insurance premiums);

12 (e) all insurance policies, programs, reserves and related bonds of any
13 nature (and any dividends or claims payable in respect thereof) covering the Business
14 prior to the Closing;

15 (f) all claims, causes of action, choses in action, rights of recovery and
16 rights of set-off of any kind, against any person or entity, including without limitation any
17 liens, security interests, pledges or other rights to payment or to enforce payment (other
18 than as such may relate to the Accounts Receivable) in connection with the Business or
19 products delivered by Seller or Seller's Affiliates prior to the Closing Date;

20 (g) all claims, causes of action, choices in action, rights of recovery
21 and rights of set-off of any kind against any person or entity arising out of or relating to
22 the Excluded Assets;

23 (h) any amounts receivable from Seller or any of Seller's Affiliates;

24 (i) all franchise tax registrations and sales and use Permits of Seller;

25 (j) all items of machinery, equipment and other assets relating to
26 centralized distribution, transportation, storage, management information systems and
27 related services provided by Seller in connection with the Business;

28 (k) the management information systems and related services utilized
29 at the _____ or by the Transferred Employees and set forth on Schedule
30 1.1A;

31 (l) all items of machinery, equipment and other assets relating to
32 research and development;

33 (m) _____;

1 (n) all Excluded Intellectual Property (as defined in the Intellectual
2 Property Purchase and License Agreement);

3 (o) all Tax refunds, including any interest in respect thereof, and Tax
4 credits attributable to periods prior to the Closing;

5 (p) all rights and interests under (including those of sponsor and
6 administrator, as applicable), and all assets of, any employee benefit plan maintained by
7 Seller or Seller's Affiliates, or ERISA Affiliates, including without limitation any Pension
8 Plan, Welfare Benefit Plan, or Benefit Arrangement, except to the extent otherwise
9 explicitly provided in accordance with Section 9.3 hereof, and

10 (q) all facilities of Seller, and all items of furniture, fixtures,
11 furnishings, machinery, spare parts and equipment located in, at or upon such facilities,
12 whether or not related to the Business.

13 "Excluded Contracts" shall mean (i) any contract or agreement not relating
14 exclusively to the Business, including, without limitation, those contracts and agreements
15 set forth on Schedule 1.1 B, and (ii) any contract or agreement set forth or described on
16 Schedule 4.3, the assignment of which is not consented to by all parties necessary
17 therefor prior to the Closing Date.

18 "Excluded Liabilities" shall mean all Liabilities of the Seller other than the
19 Assumed Liabilities.

20 "Fixtures and Equipment" shall mean all of the furniture, fixtures, furnishings,
21 machinery, spare parts and equipment (other than Inventory and Excluded Assets) owned
22 by the Seller or Seller's Affiliates and located in, at or upon the _____.

23 "GAAP" shall mean United States generally accepted accounting principles.

24 "Intellectual Property Purchase and License Agreement" shall mean the
25 Intellectual Property Purchase and License Agreement in the form attached hereto as
26 Exhibit C.

27 "Interest Rate" shall mean the prime rate as published from time to time by Bank
28 of America in the Wall Street Journal.

29 "Inventory" shall mean all finished goods inventory (excluding products shipped
30 prior to Closing but not invoiced) relating exclusively to the Business held for sale,
31 wherever the same may be located.

32 "IRS" shall mean the United States Internal Revenue Service.

33 "Leased Equipment" shall mean all of the (a) furniture, fixtures, furnishings,
34 machinery and equipment (other than furniture, fixtures, furnishings, machinery and
35 equipment included within the definition of Excluded Assets) leased by the Seller or

1 Seller's Affiliates and located in, at or upon the _____; and (b) any
2 leased vehicles used by the Transferred Employees.

3 "Liabilities" shall mean any direct or indirect liability, indebtedness, obligation,
4 commitment, expense, claim, deficiency, guaranty or endorsement of or by any person of
5 any type, whether accrued, absolute, contingent, matured, unmatured or other.

6 "Material Adverse Effect" or "material adverse change" shall mean with respect to
7 the Business or the Purchased Assets any significant and substantial adverse effect or
8 significant or substantial adverse change in the financial condition of the Business and/or
9 the Purchased Assets, taken as a whole, or on the ability of Seller to consummate the
10 transactions contemplated hereby.

11 "Net Working Capital" shall mean all Accounts Receivable, prepaid expenses and
12 Inventory, less the amount of the Assumed Current Liabilities, calculated in a manner
13 consistent with the preparation of the Financial Statements.

14 "ordinary course of business" or "ordinary course" or any similar phrase shall
15 mean the ordinary course of the conduct of the Business and consistent with Seller's past
16 practice.

17 "Permits" shall mean all licenses, permits, franchises, approvals, authorizations,
18 consents or orders of, or filings with, any governmental authority, whether federal, state
19 or local, or any other Person, necessary for the conduct of the Business as currently
20 conducted.

21 "Permitted Encumbrances" shall mean (i) statutory liens for current taxes or
22 assessments not yet delinquent or the validity of which is being contested in good faith by
23 appropriate proceedings, (ii) mechanics', carriers', workers', repairers' and other similar
24 liens arising or incurred in the ordinary course of business and not yet due or delinquent
25 or the validity of which is being contested in good faith by appropriate proceedings,
26 (iii) Encumbrances set forth on Schedule 1.1C, and (iv) other Encumbrances which in the
27 aggregate do not materially interfere with the operation of the Business as it is presently
28 being conducted.

29 "Person" shall mean any individual, corporation (including any non-profit
30 corporation), general or limited partnership, limited liability company, joint venture,
31 estate, trust, association, organization, labor union, or other entity or governmental body.

32 "Purchased Assets" shall mean all of Seller's and Seller's Affiliates' right, title and
33 interest in, to and under, to the extent transferable, (i) the Books and Records, (ii) the
34 Fixtures and Equipment, (iii) the Inventory, (iv) the Accounts Receivable, (v) the Permits
35 to the extent transferable, (vi) the Assumed Agreements, and (vii) any prepaid expenses
36 relating exclusively to the Business; *provided, however*, that in no event shall "Purchased
37 Assets" include any of the Excluded Assets.

38 "Purchased Products" shall mean those products listed on Schedule 1.1D.

1 "Regulations" shall mean any laws, statutes, regulations, rules, notice
2 requirements, court decisions, agency guidelines, principles of law and orders of any
3 federal or state government and any department or agency thereof, including without
4 limitation Environmental Laws, energy, motor vehicle safety, public utility, building and
5 health codes, occupational safety and health and laws respecting employment practices,
6 employee documentation, terms and conditions of employment and wages and hours.

7 "Representative" shall mean any officer, director, principal, attorney, agent,
8 employee or other representative.

9 "Seller's Disclosure Schedule" shall mean a schedule executed and delivered by
10 Seller to Buyer as of the date hereof which sets forth exceptions to the representations
11 and warranties contained in Article IV and certain other information called for by this
12 Agreement.

13 "Seller's Knowledge" shall mean the actual knowledge of
14 _____, as such knowledge may exist
15 at the Closing Date without inquiry into the matter to which reference to Seller's
16 Knowledge is made.

17 "Statement Date" shall mean _____, 200__.

18 "Tax" shall mean any federal, state, local, foreign or other tax, levy, impost, fee,
19 assessment or other government charge, including without limitation income, estimated
20 income, business, occupation, franchise, property, payroll, personal property, sales,
21 transfer, use, employment, commercial rent, occupancy, franchise or withholding taxes,
22 and any premium, including without limitation interest, penalties and additions in
23 connection therewith.

24 "Title Company" shall mean _____.

25 "Transition Services Agreement" shall mean a Transition Services Agreement to
26 be negotiated between Buyer and Seller pursuant to Section 6.8.

27 "Transition Trademark License" shall mean the Transition Trademark License in
28 the form attached as Exhibit A to the Intellectual Property Purchase and License
29 Agreement.

30 (b) Other Defined Terms.

31 The following terms shall have the meanings given to such terms in the
32 Sections indicated below.

33	<u>Term</u>	<u>Section</u>
34	Base Purchase Price	2.3
35	Benefit Arrangement.....	4.16(a)
36	Buyer's Plan	9.3(d)

1	CERCLA.....	4.17
2	Claim.....	10.2(c)
3	Claim Notice.....	10.2(c)
4	Closing.....	3.1
5	Closing Date.....	3.1
6	Consents.....	6.7(a)
7	Covered Person.....	9.3(a)
8	Employee Plans.....	4.16(a)
9	Environmental Laws.....	4.17
10	Environmental Permits.....	4.17(a)
11	EPA.....	4.17
12	ERISA.....	4.16(a)
13	ERISA Affiliate.....	4.16(a)
14	Final Purchase Price.....	2.4(c)
15	Financial Statements.....	4.9
16	Hazardous Materials.....	4.17
17	Indemnified Party.....	10.2(c)
18	Indemnifying Party.....	10.2(c)
19	Multiemployer Plan.....	4.16(a)
20	PBGC.....	4.16(a)
21	Pension Plan.....	4.16(a)
22	Retirement Plan.....	9.3(a)
23	Savings Plans.....	9.3(a)
24	Statement of Net Working Capital.....	2.4(a)
25	SWDA.....	4.17
26	TERP.....	9.3(a)
27	Transferred Employees.....	9.2
28	Welfare Benefit Plan.....	4.16(a)

30 1.2 Interpretation

31 (a) When a reference is made in this Agreement to Articles or Sections
32 such reference shall be to an Article or a Section of this Agreement unless otherwise
33 indicated. The table of contents and headings contained in this Agreement are for ease of
34 reference only and shall not affect the meaning or interpretation of this Agreement.
35 Whenever the words "include," "includes," or "including" are used in this Agreement,
36 they shall be deemed to be followed by the words "without limitation", whether or not so
37 stated. Any singular term in this Agreement shall be deemed to include the plural, and
38 any plural term the singular.

39 (b) The titles, captions or headings of the Articles and Sections herein,
40 and the use of a particular gender, are for convenience of reference only and are not
41 intended to be a part of or to affect or restrict the meaning or interpretation of this
42 Agreement.

43 (c) The Exhibits and Schedules identified in this Agreement are
44 incorporated herein by reference and made a part hereof.

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ARTICLE II
PURCHASE AND SALE OF ASSETS

3 2.1 Transfer of Purchased Assets

4 Upon the terms and subject to the conditions contained herein, at the Closing,
5 Seller agrees to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed,
6 transferred, assigned and delivered to Buyer, all of Seller's and Seller's Affiliates' right,
7 title and interest in, to and under the Purchased Assets, and Buyer agrees to purchase the
8 Purchased Assets.

9 2.2 Assumption of Assumed Liabilities

10 At the Closing, Buyer shall, concurrently with its purchase of the Purchased
11 Assets, assume the Assumed Liabilities upon the terms and subject to the conditions
12 contained herein.

13 2.3 Purchase Price

14 At the Closing, in consideration of the sale, transfer, assignment, conveyance and
15 delivery of the Purchased Assets, Buyer shall (a) pay to Seller an amount equal to
16 \$[(____)] (the "Base Purchase Price"), by wire transfer of immediately available
17 funds to an account designated by Seller, and (b) assume the Assumed Liabilities
18 pursuant to this Agreement. Buyer and Seller shall use their best efforts to agree upon an
19 allocation of the Base Purchase Price and Assumed Liabilities (to the extent taken into
20 account under Section 1060 of the Code) among the Purchased Assets in the manner
21 required by Section 1060 of the Code. If such agreement is reached, Buyer and Seller
22 agree to report this transaction for federal and state income tax purposes in accordance
23 with such allocation and to use reasonable efforts to sustain such allocation in any
24 subsequent tax audit or dispute.

25 2.4 Net Working Capital Adjustment

26 (a) Within sixty (60) calendar days after the Closing Date, Seller shall
27 deliver to Buyer a statement setting forth its calculation of the Net Working Capital as of
28 the Closing Date, prepared as described herein in accordance with the definition of Net
29 Working Capital (the "Statement of Net Working Capital"). Buyer shall have the right to
30 review and examine the procedures, books, records and work papers used in Seller's
31 preparation of the Statement of Net Working Capital.

32 (b) Unless Buyer notifies Seller in writing, within thirty (30) calendar
33 days after receipt of the Statement of Net Working Capital, that Buyer objects to the
34 computation contained therein, specifying in detail the basis for such objection, Seller's
35 calculation of the closing Net Working Capital shall be binding upon the parties. The
36 calculation of the Net Working Capital shall not be disputed as to accounting principles
37 so long as the principles and procedures used to compute it are consistent with those used
38 by Seller in preparing the Financial Statements. If Buyer and Seller are unable to agree
39 upon the calculation of Net Working Capital within thirty (30) calendar days after any

1 such notification has been given by Buyer (or within such extended time period as is
2 mutually agreed to by the parties), the controversy shall be referred for a final
3 determination to [_____]. Such determination shall be binding upon the
4 parties, absent manifest error. The parties shall share equally the fees and expenses of
5 such firm.

6 (c) The Base Purchase Price shall be either increased by the amount
7 by which the final closing Net Working Capital exceeds \$[_____] or decreased by
8 the amount by which \$[_____] exceeds the final amount of Net Working Capital
9 (the Base Purchase Price as so increased or decreased being referred to herein as the
10 "Final Purchase Price").

11 (d) Any Base Purchase Price adjustment payment required under
12 Section 2.4(d) shall be delivered in accordance with the instructions of the appropriate
13 recipient, together with interest thereon for each day from and including the Closing Date
14 to and excluding the date paid, at a rate per annum equal to the Interest Rate, (i) within
15 the lesser of thirty-five (35) calendar days after delivery by Seller of the Statement of Net
16 Working Capital, or five (5) calendar days after Buyer notifies Seller that it does not
17 object to the Statement of Net Working Capital; or (ii) if Buyer shall have objected to the
18 Statement of Net Working Capital, within five (5) calendar days following final
19 determination of the disputed items pursuant to Section 2.4(c).

20 2.5 Taxes

21 (a) Except as otherwise provided in this Agreement, all Taxes in
22 respect of the Purchased Assets and income of the Business for the period or portions of
23 periods ending prior to the Closing Date shall be borne by the Seller. Except as
24 otherwise provided in this Agreement, all Taxes in respect of the Purchased Assets and
25 income of the Business for the period or portions of periods beginning on and after the
26 Closing Date shall be borne by the Buyer.

27 (b) If Buyer or Seller pays any Tax agreed to be borne by the other
28 party under this Agreement, such other party shall promptly (within ten (10) business
29 days of receipt of written notice from such paying party) reimburse the paying party for
30 the amounts so paid. If any party receives any refund or credit of Tax to which another
31 party is entitled under this Agreement, the receiving party shall promptly (within 10 days)
32 pay such amounts to the party entitled thereto.

33 2.6 Closing Costs; Transfer Taxes and Fees

34 Buyer shall pay the cost of all sales, use and transfer Taxes arising out of the
35 transfer of the Purchased Assets pursuant to this Agreement and shall pay all costs and
36 expenses incurred in connection with obtaining or recording title to the Purchased Assets.
37 The sales, use and transfer tax returns required by reason of the transfer of the Purchased
38 Assets pursuant to this Agreement shall be timely prepared and filed by the party initially
39 obligated by law or regulation to make such filing. The parties agree to cooperate with
40 each other in connection with the preparation and filing of such returns, in obtaining all

- 1 (ii) the Assignment and Assumption Agreement;
2 (iii) the Transition Trademark License;
3 (iv) the Intellectual Property Purchase and License
4 Agreement;
5 (v) the certificates and other documents required by
6 Article VIII in form reasonably satisfactory to Buyer;
7 (vi) all documents required to transfer Leased Equipment to
8 Buyer, to the extent such Leased Equipment is transferable to Buyer; and
9 (vii) all Books and Records and Contracts located at
10 _____ (which shall be deemed delivered to Buyer at Closing).
11 Seller shall use commercially reasonable efforts to deliver any other Books and Records
12 and Contracts to Buyer as soon as practicable after the Closing.

13 (b) Buyer's Deliveries.

14 At the Closing, Buyer shall deliver or cause to be delivered the Base
15 Purchase Price to Seller in accordance with Section 2.3, and shall execute and deliver to
16 Seller or Seller's Affiliates:

- 17 (i) the Assignment and Assumption Agreement;
18 (ii) the Transition Trademark License;
19 (iii) the Intellectual Property Purchase and License
20 Agreement;
21 (iv) the consents, certificates and other documents required
22 by Article VII in form reasonably satisfactory to Seller; and
23 (v) all documents required to transfer Leased Equipment to
24 Buyer, to the extent such Leased Equipment is transferable to Buyer.

25 ARTICLE IV
26 REPRESENTATIONS AND WARRANTIES OF SELLER

27 Seller hereby represents and warrants to Buyer, as of the date hereof, and except
28 as otherwise set forth on the Seller's Disclosure Schedule, as follows:

29 4.1 Organization

30 Seller is a corporation duly organized, validly existing and in good standing under
31 the laws of the State of _____ with full corporate power and authority to
32 conduct the Business as it is presently being conducted and to own and lease those
33 properties and assets relating to the Business that are included in the Purchased Assets.

1 Seller is duly qualified to do business as a foreign corporation and is in good standing in
2 each jurisdiction in which such qualification is necessary under applicable law as a result
3 of the conduct of the Business or the ownership of those properties which relate to the
4 Business, except where the failure to be so qualified or in good standing would not have a
5 Material Adverse Effect.

6 4.2 Authorization

7 Seller has all requisite corporate power and authority, and has taken all corporate
8 action necessary, to execute and deliver this Agreement and the Ancillary Agreements to
9 which it is a party, to consummate the transactions contemplated hereby and thereby and
10 to perform its obligations hereunder and thereunder. Each of this Agreement and the
11 Ancillary Agreements to which Seller is a party has been (or, when executed and
12 delivered, will have been) duly executed and delivered by Seller and constitutes (or,
13 when executed and delivered, will constitute) a legal, valid and binding obligation of
14 Seller enforceable against Seller in accordance with its terms, except as limited by
15 bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to
16 creditor's rights generally or by equitable principles (whether considered in an action at
17 law or in equity).

18 4.3 Consents and Approvals

19 Except as set forth on Schedule 4.3 hereto, (i) no notice to, declaration, filing or
20 registration with, or authorization, clearance, consent or approval of, or permit from, any
21 domestic or foreign governmental or regulatory body or authority, and (ii) no consent to
22 the assignment of any contract set forth in Schedule 4.7(a) (excluding those contracts set
23 forth on Schedule 1.1B) from any other person or entity, is, in each case, required to be
24 made or obtained by Seller in connection with the execution, delivery and performance of
25 this Agreement and the Ancillary Agreements and the consummation of the transactions
26 contemplated hereby and thereby.

27 4.4 Absence of Certain Changes or Events

28 Except as set forth in Schedule 4.4 and as otherwise contemplated by this
29 Agreement, since the Statement Date, there has not been any:

30 (a) change in the financial condition of the Business which has had a
31 Material Adverse Effect;

32 (b) execution, amendment, cancellation or termination of any Contract
33 or Permit material to the Business;

34 (c) execution of any lease by Seller with respect to the Business
35 involving annual payments in excess of \$ _____;

36 (d) failure to repay when due any material obligation of Seller with
37 respect to the Business, except in the ordinary course of business or where such failure
38 would not have a Material Adverse Effect;

1 (e) change in the accounting methods or practices of Seller which
2 would have a Material Adverse Effect on the Financial Statements;

3 (f) liabilities incurred by Seller involving \$_____ or more, other
4 than liabilities incurred in the ordinary course of business, or any material increase or
5 material change in any assumptions underlying or methods of calculating any bad debt,
6 contingency or other reserves, in each case with respect to the Business; or

7 (g) agreement by Seller to do any of the foregoing.

8 4.5 Fixtures and Equipment

9 Schedule 4.5 includes all material assets comprising the Fixtures and Equipment
10 (other than any spare parts) with an original purchase price in excess of \$_____.
11 Seller or Seller's Affiliates have good title to the personal property included in the
12 Fixtures and Equipment free of any Encumbrances, other than Permitted Encumbrances,
13 except for any such Fixtures and Equipment which have been disposed of in the ordinary
14 course of business.

15 4.6 Leases

16 Schedule 4.6(b) sets forth a list of all real property leased or subleased by
17 Seller solely in connection with the Business. Seller has delivered to Buyer correct and
18 complete copies of the leases and subleases listed on Schedule 4.6(b) (as amended to
19 date).

20 4.7 Agreements and Commitments

21 (a) Agreements.

22 Schedule 4.7(a) sets forth the following Assumed Agreements (other than
23 (x) those Assumed Agreements which are terminable on less than 90 days notice by the
24 Seller, (y) customer contracts for the sale of Purchased Products entered into in the
25 ordinary course of business, and (z) purchase orders issued in the ordinary course of
26 business):

27 (i) any agreement for the lease of personal property to or
28 from any Person providing for lease payments in excess of \$_____ per annum;

29 (ii) any agreement concerning a partnership or joint
30 venture;

31 (iii) any material agreement concerning confidentiality or
32 non-competition;

33 (iv) any collective bargaining agreement;

1 (v) any agreement for the employment of a Transferred
2 Employee on a full-time, part-time, consulting, or other basis providing annual
3 compensation in excess of \$_____ or providing material severance benefits; and

4 (vi) any other agreement the performance of which involves
5 consideration in excess of \$_____.

6 (b) Absence of Defaults; Validity of Agreements.

7 Seller is not (and, to Seller's Knowledge, no other party thereto is) in
8 material breach or violation of, or material default under, any of the agreements,
9 commitments or instruments set forth on Schedule 4.7(a), the breach, violation or default
10 of which would have a Material Adverse Effect, and, except as set forth on
11 Schedule 4.7(b), no such agreement, commitment and instrument will be terminated in
12 accordance with its terms solely as a result of the Closing of the transactions
13 contemplated hereby.

14 4.8 No Conflict or Violation

15 Neither the execution, delivery or performance of this Agreement or the Ancillary
16 Agreements, nor the consummation of the transactions contemplated hereby or thereby,
17 nor compliance by Seller with any of the provisions hereof or thereof, will (a) violate or
18 conflict with any provision of the Certificate of Incorporation or Bylaws of Seller,
19 (b) violate, conflict with, or result in or constitute a default under, or result in the
20 termination of, or accelerate the performance required by, or result in a right of
21 termination or acceleration under, or result in the creation of any Encumbrance upon any
22 of the Purchased Assets under, any of the terms, conditions or provisions of any Contract,
23 indebtedness, note, bond, indenture, security or pledge agreement, commitment, license,
24 lease, franchise, permit, agreement, authorization, concession, or other instrument or
25 obligation which relate exclusively to the Purchased Assets, or (c) violate any Regulation
26 or Court Order, except (i) for such violations, defaults, terminations, accelerations or
27 creations of Encumbrances which, in the aggregate, would not have a Material Adverse
28 Effect, or (ii) a violation, breach or default under any Assumed Agreement as a result of
29 any party's failure thereunder to consent to a transfer or assignment thereof.

30 4.9 Financial Statements

31 Schedule 4.9 sets forth (a) the _____ statement for the Business
32 for the year ended _____, 200__ and (b) an unaudited statement of certain assets
33 and liabilities of the Business as of _____, 200__ (collectively the "Financial
34 Statements"). Except as set forth in the accounting policies described and set forth in
35 Schedule 4.9, the line items set forth therein have been prepared in accordance with
36 GAAP consistently applied throughout the period covered thereby, and present fairly and
37 accurately the information purported to be presented therein at the dates and for the
38 periods indicated therein.

1 4.10 Litigation

2 Schedule 4.10 sets forth each material order, writ, injunction, judgment or decree
3 outstanding and in effect, each suit and litigation and, to Seller's Knowledge, each
4 proceeding, arbitral action, governmental investigation and labor dispute (other than
5 routine grievance procedures or routine, uncontested claims for benefits under any benefit
6 plans) pending or threatened against Seller which (a) relates to the Business and (b)(i)
7 could reasonably be expected to involve potential liability to Seller in excess of
8 \$ _____, which liability is uninsured or subject to deductibles or retention levels in
9 excess of \$ _____ or (ii) could, individually or in the aggregate, have a Material
10 Adverse Effect.

11 4.11 Labor Matters

12 Except as set forth on Schedule 4.11, Seller is not a party to any labor agreement
13 with respect to the Transferred Employees with any labor organization, union, group or
14 association. There is no labor strike or labor disturbance pending or, to Seller's
15 Knowledge, threatened against Seller in connection with the Business, nor is Seller
16 experiencing a work stoppage or other material labor difficulty with respect to the
17 Transferred Employees. Seller is in material compliance with respect to the Transferred
18 Employees with all applicable laws respecting employment practices, terms and
19 conditions of employment and wages and hours. To Seller's Knowledge, there is no
20 unfair labor practice charge or complaint against Seller pending before the National
21 Labor Relations Board or any other governmental agency with respect to the Transferred
22 Employees.

23 4.12 Liabilities

24 To Seller's Knowledge, except for Excluded Liabilities and Liabilities assumed by
25 Buyer pursuant to Article IX, Seller has no material Liabilities due or to become due
26 relating to the Business, except (a) Liabilities which are set forth or reserved for in the
27 Financial Statements, which have not been paid or discharged since the Statement Date,
28 (b) Liabilities arising in the ordinary course of business under contracts and other
29 business arrangements described in the Seller's Disclosure Schedule (and under those
30 contracts which are not required to be disclosed on Seller's Disclosure Schedule),
31 (c) Liabilities incurred since the Statement Date in the ordinary course of business, and
32 (d) Liabilities that are not required to be disclosed because they will not be assumed by
33 Buyer under this Agreement.

34 4.13 Licenses and Permits; Compliance

35 Except as set forth on Schedule 4.13(a), Seller is not a licensee under any material
36 written or, to Seller's Knowledge, oral governmental or regulatory licenses or permits that
37 are required to conduct the Business as presently conducted. Except as set forth on
38 Schedule 4.13(b), Seller has not received any written notice to the effect that, or, to
39 Seller's Knowledge, otherwise been advised that, it is in violation of (i) any such licenses
40 or permits or (ii) any Regulations or Court Orders with respect to the Business, in each

1 case which violation has not been corrected as of the date hereof and would have a
2 Material Adverse Effect.

3 4.14 No Brokers

4 Neither Seller nor any of its respective officers, directors, employees,
5 shareholders or Affiliates has employed or made any agreement with any broker, finder
6 or similar agent or any person or firm which will result in any obligation of Buyer or any
7 of its Affiliates to pay any finder's fee, brokerage fee or commission or similar payment
8 in connection with the transactions contemplated hereby.

9 4.15 No Other Agreements to Sell the Purchased Assets

10 Except as set forth on Schedule 4.15, neither Seller nor any of its officers,
11 directors, shareholders or Affiliates have any commitment or legal obligation, absolute or
12 contingent, to any other person or firm other than the Buyer to sell, assign, transfer or
13 effect a sale of any of the Purchased Assets (other than Inventory in the ordinary course
14 of business), to effect any consolidation, liquidation or dissolution of Seller, or to enter
15 into any agreement or cause the entering into of any agreement with respect to any of the
16 foregoing.

17 4.16 Employee Benefit Plans

18 (a) Definitions.

19 The following terms, when used in this Section 4.16, shall have the
20 following meanings. Any of these terms may, unless the context otherwise requires, be
21 used in the singular or the plural depending on the reference.

22 (i) "Benefit Arrangement" shall mean each plan,
23 arrangement (written or oral), program, agreement or commitment providing for
24 insurance coverage (including without limitation any self-insured arrangements),
25 workers' compensation, disability benefits, supplemental unemployment benefits,
26 vacation benefits, severance benefits, life, health, disability or accident benefits
27 (including without limitation any "voluntary employees' beneficiary association" as
28 defined in Section 501(c)(9) of the Code providing for the same or other benefits) or for
29 deferred compensation, profit-sharing bonuses, stock options, stock appreciation rights,
30 stock purchases or other forms of incentive compensation or post-retirement insurance,
31 compensation or benefits which (A) is not a Welfare Benefit Plan, Pension Plan or
32 Multiemployer Plan, (B) is entered into, maintained, contributed to or required to be
33 contributed to by Seller, and (C) covers any Sales Employees (with respect to their
34 relationship with Seller).

35 (ii) "Employee Plans" shall mean all Benefit Arrangements,
36 Multiemployer Plans, Pension Plans and Welfare Benefit Plans.

1 (iii) "ERISA" shall mean the Employee Retirement Income
2 Security Act of 1974, as amended, and any lawful rules and regulations promulgated
3 thereunder.

4 (iv) "ERISA Affiliate" shall mean any entity which is (or at
5 any relevant time was) a member of a "controlled group of corporations" with, under
6 "common control" with Seller as defined in Section 414(b) or (c) of the Code.

7 (v) "Multiemployer Plan" shall mean any "multiemployer
8 plan," as defined in Section 4001(a)(3) of ERISA, (A) which Seller maintains,
9 administers, contributes to or is required to contribute to (B) which covers any Sales
10 Employees (with respect to their relationship with Seller).

11 (vi) "PBGC" shall mean the Pension Benefit Guaranty
12 Corporation.

13 (vii) "Pension Plan" shall mean any "employee pension
14 benefit plan" defined in Section 3(2) of ERISA (other than a Multiemployer Plan) (A)
15 which Seller or any ERISA Affiliate maintains, administers, contributes to or is required
16 to contribute to and (B) which covers any Sales Employees (with respect to their
17 relationship with Seller).

18 (viii) "Welfare Benefit Plan" shall mean any "employee
19 welfare benefit plan" as defined in Section 3(1) of ERISA, (A) which Seller or any
20 ERISA Affiliate maintains, administers, contributes to or is required to contribute to and
21 (B) which covers any Sales Employees (with respect to their relationship with Seller).

22 (b) Disclosure; Delivery of Copies of Relevant Documents and Other
23 Information.

24 Schedule 4.16 contains a complete list of Employee Plans. True and
25 complete copies of each Welfare Benefit Plan providing medical benefits to Sales
26 Employees and all amendments thereto have been delivered by Seller to Buyer.

27 (c) Representations.

28 Except as set forth in Schedule 4.16, Seller represents and warrants as
29 follows:

30 (i) Pension Plans.

31 (A) No "accumulated funding deficiency" (for which an
32 excise tax is due or would be due in the absence of a waiver) as defined in Section 412 of
33 the Code or as defined in Section 302(a)(2) of ERISA, whichever may apply, exists with
34 respect to any Pension Plan, whether or not waived.

35 (B) Seller is not required to provide security to a
36 Pension Plan under Section 401(a)(29) of the Code.

1 (C) Seller has paid all premiums (and interest charges
2 and penalties for late payment, if applicable) due the PBGC with respect to each Pension
3 Plan for each plan year thereof for which such premiums are required. Within the past
4 six (6) years, no proceeding has been commenced by the PBGC to terminate any Pension
5 Plan.

6 (ii) Multiemployer Plans.

7 (A) Seller has not withdrawn from a Multiemployer
8 Plan in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203
9 and 4205 of ERISA, respectively, so as to result in a Liability of Seller which has not
10 been fully paid, except with respect to any such withdrawal where Seller and a third
11 person have agreed to comply with the provisions of Section 4204 of ERISA.

12 (B) To Seller's Knowledge, with respect to each
13 Multiemployer Plan: (1) no such Multiemployer Plan has been terminated or has been in
14 reorganization under ERISA so as to result, directly or indirectly, in any material
15 Liability of Seller under Title IV of ERISA; (2) no proceeding has been initiated by any
16 person (including the PBGC) to terminate any Multiemployer Plan.

17 4.17 Inventory

18 Except as set forth in Schedule 4.17, the Inventory (a) is usable and saleable in the
19 ordinary course of the Business except to the extent that the transactions contemplated by
20 this Agreement make any of the Inventory obsolete under the Transition Trademark
21 License, (b) is not adulterated or misbranded, and (c) may be shipped in interstate
22 commerce in accordance with the Federal Food, Drug and Cosmetic Act, as amended.

23 ARTICLE V
24 REPRESENTATIONS AND WARRANTIES OF BUYER

25 Buyer hereby represents and warrants to Seller as follows:

26 5.1 Organization of Buyer

27 Buyer is a corporation duly organized, validly existing and in good standing under
28 the laws of the state of its incorporation with full power and authority to own and lease its
29 properties and conduct its business as it is presently being conducted. Buyer is duly
30 authorized, qualified or licensed to do business as a foreign corporation and is in good
31 standing, in each of the jurisdictions in which its right, title and interest in or to any of the
32 assets held by it, or the conduct of its business, requires such authorization, qualification
33 or licensing, except where failure to be so authorized, qualified, or licensed would not,
34 individually or in the aggregate, have a material adverse effect on the condition (financial
35 or otherwise), liabilities, operations or results of operations of Buyer.

1 5.2 Authorization

2 Buyer has all requisite corporate power and authority, and has taken all corporate
3 action necessary, to execute and deliver this Agreement and the Ancillary Agreements to
4 which it is a party, to consummate the transactions contemplated hereby and thereby and
5 to perform its obligations hereunder and thereunder. The execution and delivery of this
6 Agreement and the Ancillary Agreements to which Buyer is a party, and the
7 consummation by Buyer of the transactions contemplated hereby and thereby, have been
8 duly authorized by all necessary corporate action by Buyer. No other corporate
9 proceedings on the part of Buyer are necessary to authorize this Agreement and the
10 Ancillary Agreements and the transactions contemplated hereby and thereby. Each of
11 this Agreement and the Ancillary Agreements to which Buyer is a party has been (or,
12 when duly executed and delivered, will have been) duly executed and delivered by Buyer
13 and constitutes (or, when executed and delivered, will constitute) a legal, valid and
14 binding obligation of Buyer, enforceable against Buyer in accordance with its terms,
15 except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar
16 laws relating to creditor's rights generally or by equitable principles (whether considered
17 in an action at law or in equity).

18 5.3 No Conflict or Violation

19 Neither the execution, delivery or performance of this Agreement or the Ancillary
20 Agreements, nor the consummation of the transactions contemplated hereby or thereby,
21 nor compliance by Buyer with any of the provisions hereof or thereof, will (a) violate or
22 conflict with any provision of the Certificate of Incorporation or Bylaws of Buyer,
23 (b) violate, conflict with, or result in or constitute a default under, or result in the
24 termination of, or accelerate the performance required by, or result in a right of
25 termination or acceleration under, or result in the creation of any Encumbrance upon any
26 of Buyer's assets under, any of the terms, conditions or provisions of any contract,
27 indebtedness, note, bond, indenture, security or pledge agreement, commitment, license,
28 lease, franchise, permit, agreement, authorization, concession, or other instrument or
29 obligation to which Buyer is a party, (c) violate any Regulation or Court Order, except
30 for such violations, defaults, terminations, accelerations or creations of Encumbrances
31 which, in the aggregate, would not have a material adverse effect on the business of
32 Buyer or its ability to consummate the transactions contemplated hereby or thereby.

33 5.4 Consents and Approvals

34 Except as set forth on Schedule 5.4 hereto, no notice to, declaration, filing or
35 registration with, or authorization, clearance, consent or approval of, or permit from, any
36 domestic or foreign governmental or regulatory body or authority, or any other person or
37 entity, is required to be made or obtained by Buyer in connection with the execution,
38 delivery and performance of this Agreement and the Ancillary Agreements and the
39 consummation of the transactions contemplated hereby and thereby.

1 6.3 Access to Information

2 In the event Seller provides Buyer with access to the Corporate Office or any
3 other facilities of Seller or its Affiliates prior to the Closing Date, which access may be
4 granted at Seller's sole discretion, Buyer shall indemnify Seller and its Affiliates, and
5 hold them harmless from and against any and all damages arising out of or resulting from
6 such access.

7 6.4 Consents and Efforts

8 Buyer will, as soon as practicable, commence to take all action required to obtain
9 all Permits, consents, clearances, approvals and agreements of, and to give all notices and
10 make all other filings with, any third parties, including governmental authorities,
11 necessary to authorize, approve or permit the full and complete sale, conveyance,
12 assignment or transfer of the Purchased Assets and the Leased Equipment. In addition,
13 subject to the terms and conditions herein provided, each of the parties hereto covenants
14 and agrees to use commercially reasonable efforts to take, or cause to be taken, all action
15 or do, or cause to be done, all things necessary, proper or advisable under applicable laws
16 and regulations to consummate and make effective the transactions contemplated hereby
17 and to cause the fulfillment of the parties' obligations hereunder; it being understood that
18 the obtaining of all requested Permits, clearances, consents and approvals (including,
19 without limitation, consents or approvals of lessors under Equipment Leases to transfer
20 Leased Equipment to Buyer) is not a condition to any party's obligation to consummate
21 the transactions contemplated by this Agreement.

22 6.5 Conduct of Business

23 From the date hereof through the Closing, Seller shall, except as contemplated by
24 this Agreement, or as consented to by Buyer in writing, use commercially reasonable
25 efforts to operate the Business in a manner consistent with its ordinary course and
26 substantially in accordance with past practice and will not take any action inconsistent
27 with this Agreement or with the consummation of the Closing. Without limiting the
28 generality of the foregoing, Seller shall not, except as specifically contemplated by this
29 Agreement or as consented to by Buyer in writing:

30 (a) sell, assign, transfer, convey, lease, mortgage, pledge or otherwise
31 dispose of or encumber any of the Purchased Assets, or any interests therein, except in
32 the ordinary course of business;

33 (b) enter into, extend, materially modify, terminate or renew any
34 Assumed Agreement, except in the ordinary course of business; or

35 (c) enter into any agreement, or otherwise become obligated, to do any
36 action prohibited hereunder.

1 6.6 Updated Disclosure Schedules

2 From the date hereof through the Closing Date, Seller and Buyer shall update
3 those portions of the Disclosure Schedules relating to the representations and warranties
4 contained in Articles IV and V hereof, respectively, in each case to reflect changes
5 thereto through the Closing Date.

6 6.7 Failure to Obtain Third Party Consents

7 (a) The parties hereto acknowledge that the consent, approval or
8 permission of certain third parties may be required for the sale, transfer or assignment by
9 Seller to Buyer of certain of the Assumed Agreements, Permits, Leases and Equipment
10 Leases, or the assumption by Buyer of certain of the Assumed Agreements (hereinafter
11 referred to as the "Consents"). To the extent that any of the Assumed Agreements are not
12 assignable without the consent of a third party, neither this Agreement, nor any of the
13 instruments or documents executed and delivered in connection herewith, shall constitute
14 an assignment thereof if such assignment or attempted assignment would constitute a
15 breach thereof. Buyer and Seller also agree that, although Seller and Buyer agree to
16 cooperate with each other in attempting to obtain all Consents, any failure to obtain any
17 Consents by either Seller or Buyer, as the case may be, for any reason whatsoever shall
18 not constitute a breach of this Agreement by Seller or Buyer, as the case may be.

19 (b) If one or more Consents are not obtained prior to or at Closing and
20 the purchase and sale contemplated by this Agreement is consummated, unless Seller and
21 Buyer otherwise agree in writing, Seller agrees to use commercially reasonable efforts for
22 a period of sixty (60) days after Closing to assist Buyer in obtaining any such Consent.
23 In addition, during the period after the Closing, Seller shall use commercially reasonable
24 efforts to allow Buyer, to the extent permitted by applicable law and to the extent
25 reasonably within the contractual or other ability or control of Seller, and provided Buyer
26 reimburses Seller immediately for the costs and liabilities incurred by Seller, to enjoy the
27 economic and other benefits of the subject matter of the applicable Assumed Agreement
28 as if such Consent had been obtained; it being understood that Seller's commercially
29 reasonable efforts shall not include the expenditure of any amounts which Buyer would
30 not otherwise be liable for if the Consent had been obtained and the subject matter to
31 which such Consent would have related had been assigned to Buyer or for which Seller is
32 not reimbursed immediately pursuant to the terms hereof.

33 6.8 Transition Services Agreement

34 Buyer and Seller will use their commercially reasonable best efforts to agree upon
35 a Transition Services Agreement. Subject to each party's exercise of its commercially
36 reasonable best efforts to reach a mutually agreeable agreement, the execution of such
37 agreement shall not be a condition to either party's obligation to consummate the
38 transactions contemplated by this Agreement.

39

1 6.9 [INTENTIONALLY DELETED]

2 6.10 [INTENTIONALLY DELETED]

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ARTICLE VII
CONDITIONS TO SELLER'S OBLIGATIONS

6

The obligations of Seller to consummate the transactions provided for hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Seller:

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8

7.1 Representations, Warranties and Covenants

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All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date, and Buyer shall have performed and satisfied in all material respects all agreements and covenants required hereby to be performed by it prior to or on the Closing Date.

15

7.2 No Actions or Court Orders

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No Action by any governmental authority or Court Order shall have been instituted enjoining or seeking to enjoin or otherwise prevent the transactions contemplated by this Agreement or the Ancillary Agreements.

19

7.3 Certificates

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Buyer shall furnish Seller with such certificates of its officers and others to evidence compliance with the conditions set forth in this Article VII as may be reasonably requested by Seller.

23

7.4 Corporate Documents

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Seller shall have received from Buyer copies of resolutions adopted by the board of directors of Buyer approving this Agreement and the Ancillary Agreements to which Buyer is a party and the transactions contemplated hereby and thereby, certified by Buyer's corporate secretary or assistant secretary.

28

7.5 Purchase Price

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30

Buyer shall have paid or caused to have been paid the Base Purchase Price to Seller in accordance with Section 2.3.

31

7.6 Buyer's Deliveries

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33

Buyer shall have executed and delivered each of the documents set forth in Section 3.2(b).

1 records or other information that may be relevant to such return, audit or examination,
2 proceeding or determination, and (c) each provide the other with any final determination
3 of any such audit or examination, proceeding, or determination that affects any amount
4 required to be shown on any tax return of the other for any period. Without limiting the
5 generality of the foregoing or of Section 9.4, Buyer and Seller shall each retain, until the
6 applicable statutes of limitations (including any extensions of which a party holding the
7 following has notice) have expired, copies of all tax returns, supporting work schedules,
8 and other records or information that may be relevant to such returns for all tax periods or
9 portions thereof ending on or before the Closing Date and shall notify the other prior to
10 destroying any such records; *provided, however*, that failure to provide such notification
11 shall not constitute a basis for any liability or claim for damages by the other party
12 hereto.

13 9.2 Offers of Employment

14 Upon the terms and subject to the conditions contained herein, effective as of the
15 Closing Date, Buyer shall offer to hire all of the employees of Seller dedicated to the
16 Business, except the individuals listed on Schedule 9.2, in the same capacity in which
17 they were employed by, or performing services for, Seller prior to the Closing Date,
18 including all such employees who are either actively at work, or on vacation, short-term
19 disability, disability covered by workers compensation or approved leave. Such
20 employees who accept such offers of employment are referred to herein as the
21 "Transferred Employees." In addition, with respect to any of the Transferred Employees
22 who are not actively at work as of the Closing Date due to a disability covered by
23 workers' compensation, Buyer shall allow such Transferred Employees to return to active
24 work when released for return to work by their medical examiners. Following the
25 Closing Date, Buyer shall continue the salaries or wage payments to all of the
26 Transferred Employees, at no less than the levels of such salaries or wages currently paid
27 to them by Seller, during their continued employment with Buyer, until such salaries or
28 wages are changed by Buyer in the ordinary course of business, but in no event shall the
29 level of such salaries or wages be decreased (nor shall any of the Transferred Employees
30 be terminated except for cause) prior to _____ after the Closing Date. Buyer shall
31 indemnify, and hold Seller harmless from, any Liabilities or expenses which Seller may
32 incur which arise from or relate to the termination by Buyer after the Closing Date of any
33 of the Transferred Employees.

34 9.3 Employee Plans

35 (a) Definitions

36 The terms defined in Section 4.16 hereof shall have the same meanings
37 whenever they are used in this Section 9.3. In addition, the following terms shall have
38 the following meanings whenever used in this Section 9.3 or other related provision of
39 this document.

40 (i) "Covered Person" shall mean each Transferred
41 Employee, and each dependent or qualified beneficiary of a Transferred Employee, who

1 immediately prior to the Closing Date is covered under any Employee Plan in any
2 capacity.

3 (ii) "Retirement Plan" shall mean the Nestlé USA
4 Retirement Plan, as in existence on the Closing Date or as it may be amended.

5 (iii) "Savings Plan" shall mean the Nestlé USA 401(k)
6 Savings Plan, as in existence on the Closing Date or as it may be amended.

7 (iv) "TERP" shall mean the Nestlé USA Top Executive
8 Retirement Program as in existence on the Closing Date or as it may be amended. [I am
9 checking on whether any of the employees involved are currently covered under this
10 program. If not, we can delete references to it.

11 (b) Retirement Plan and TERP

12 Seller and/or its ERISA Affiliates shall retain the sponsorship of the
13 Retirement Plan and TERP and Seller, its ERISA Affiliates and/or the trust related to the
14 Retirement Plan, as applicable, shall retain all the assets of and liabilities attributable to
15 the Retirement Plan and the TERP. As of the Closing Date, no further benefits shall
16 accrue for any Transferred Employee under the Retirement Plan or TERP. Distributions
17 under the Retirement Plan and TERP shall be made in accordance with their terms, as
18 they may be amended (in general, under their current terms distributions would be
19 delayed until such Transferred Employee terminates employment with Buyer). Except as
20 required by law, the Seller and/or its ERISA Affiliates shall have no obligation to vest
21 any Transferred Employee under the Retirement Plan and TERP as a result of the
22 transactions contemplated hereby.

23 (c) Savings Plans

24 Except as otherwise provided herein, Seller and/or its ERISA Affiliates
25 shall retain the sponsorship of the Savings Plan, and Seller, its ERISA Affiliates and/or
26 the trust related to the Savings Plan, as applicable, shall retain all the assets of and
27 liabilities attributable to the Savings Plan. Effective as of the Closing Date, contributions
28 to the Savings Plan made by Seller on behalf of the Transferred Employees shall cease.
29 The Closing Date shall be the date of "termination of employment" of each Transferred
30 Employee under the Savings Plan for all purposes, including eligibility for the
31 commencement of distributions, except to the extent that commencement of distributions
32 is restricted by law, including any applicable provision of ERISA or the Code. Except as
33 required by law, the Seller and/or its ERISA Affiliates shall have no obligation to vest
34 any Transferred Employee under the Savings Plan as a result of the transactions
35 contemplated by the Asset Purchase Agreement. If Buyer and Seller agree, the vested
36 account balances of the Transferred Employees under such Savings Plan may be
37 transferred to a plan maintained by Buyer.

1 (d) Welfare Plans and Benefit Arrangements

2 (i) Generally. The Closing Date shall be the date of
3 "termination of employment" of each Transferred Employee under each Welfare Plan and
4 each Benefit Arrangement and shall be the date of cessation of participation of each
5 Covered Person under all Welfare Plans and also under all Benefit Arrangements with
6 respect to which no contrary provisions are made in this Section 9.3. Except as set forth
7 below, to the extent that any such Welfare Plans and Benefit Arrangements have incurred
8 claims on or before the Closing Date which have not been paid by the Closing Date, such
9 incurred but unpaid claims shall be paid after the Closing Date by Seller or its ERISA
10 Affiliates.

11 (ii) Retiree Medical. Any Transferred Employee who as of
12 the Closing Date satisfies the age, service and other eligibility requirements for retiree
13 health coverage and retiree life insurance under any Welfare Benefit Plan shall be
14 provided by Seller and/or its ERISA Affiliates with an opportunity to elect to commence
15 such retiree health coverage and retiree life insurance under such plan as of the Closing
16 Date, *provided* that such Transferred Employee makes a timely election for such
17 coverage or insurance not later thirty (30) days after the Closing Date. Such coverage
18 and insurance shall be subject to all the terms and conditions of the relevant Welfare
19 Benefit Plans, including the rights of the Seller and/or its ERISA Affiliates to amend or
20 terminate such plans. The cost of providing such coverage shall be borne by Seller
21 and/or its ERISA Affiliates. Except as otherwise set forth above, any retiree medical
22 coverage and retiree life insurance for any Transferred Employee, or their dependents or
23 qualified beneficiaries, shall be the sole responsibility of Buyer.

24 (iii) Buyer's Plans. Immediately after the Closing Date,
25 Buyer shall extend coverage under its health plan to all Transferred Employees, and to all
26 other Covered Persons with respect to such Transferred Employees, who were covered
27 under a health plan of the Seller immediately prior to the Closing Date. In addition,
28 Buyer shall provide all Transferred Employees with coverage under plans and benefit
29 arrangements which are generally comparable to those which Buyer currently provides to
30 its similarly situated employees. All such coverages will be under the same terms and
31 conditions as generally apply to similarly situated employees of the Buyer. However,
32 Buyer shall waive any "preexisting condition" exclusion or "actively at work"
33 requirement which would cause any of the Covered Persons or any existing medical
34 condition of the Covered Persons to be excluded from its health plans.

35 Buyer shall recognize all prior service of the Transferred Employees that
36 Seller recognized under its Welfare Benefit Plans, Pension Plans and Benefit
37 Arrangements for the purposes of vesting and eligibility to participate under Buyer's
38 Welfare Benefit Plans, Pension Plans and Benefit Arrangements. Buyer agrees to
39 coordinate deductibles, maximum benefit restrictions and "out-of-pocket" maximums so
40 that (A) Transferred Employees receive credit toward any deductibles under Buyer's
41 Welfare Plans for deductibles paid under Seller's Welfare Plans during the coverage year
42 in which the employment transfer occurs and (B) Transferred Employees receive credit
43 for eligible claims incurred under the Seller's Welfare Benefit Plans during the coverage

1 year toward any "out-of-pocket" maximums under Buyer's Welfare Benefit Plans. As
2 soon as reasonably practicable after the Closing Date, Seller shall prepare and deliver to
3 Buyer the information needed for Buyer to comply with the preceding sentence, and shall
4 otherwise cooperate with Buyer in making such determinations.

5 Buyer shall not provide any incentive or inducement to any Covered
6 Person to choose to be covered by the health care continuation provisions of Seller's
7 Welfare Plan, including but not limited to payment of any Covered Person's premium for
8 such health care continuation coverage for any Covered Person who elects to receive
9 such coverage from Seller's Welfare Plan. Buyer shall recognize Transferred Employees'
10 vacation time, sick leave and paid time off earned but unused prior to the Closing Date
11 under Seller's relevant Welfare Plans and Benefit Arrangements. Buyer shall, until at
12 least the first anniversary of the Closing Date, continue to permit earned but unused
13 vacation time, sick leave credits and paid time off to be utilized in the same manner as
14 permitted immediately prior to the Closing Date.

15 (e) Severance Benefits

16 Seller does not intend to treat the transactions contemplated by this
17 Agreement, or any future steps which Buyer may take in connection with the Business, as
18 constituting events entitling any of the Transferred Employees to severance under any
19 arrangement of Seller. Buyer agrees not to dispute such treatment or assert that it should
20 be otherwise. Any severance, termination or similar payments or obligations due to any
21 Transferred Employee which relate to the termination of any Transferred Employee by
22 Buyer on or after the Closing Date shall be the sole responsibility of Buyer.

23 (f) Workers' Compensation

24 Notwithstanding the provisions of Section 9.3(d), on and after the Closing
25 Date (i) Seller shall be responsible for paying, or arranging for insurance (including
26 appropriate self-insurance) to pay, all workers' compensation claims of Transferred
27 Employees which have been properly filed with Seller prior to the Closing Date, and
28 (ii) Buyer shall be responsible for paying, or arranging for insurance (including
29 appropriate self-insurance) to pay, all other workers' compensation claims of Transferred
30 Employees regardless of whether such claims or costs relate to injuries, illnesses,
31 occupational diseases, medical treatments or other events occurring prior to, on or after
32 the Closing Date.

33 9.4 Availability of Records

34 After the Closing, Buyer shall make available to Seller as reasonably requested by
35 Seller, its agents and representatives, any taxing authority, or any governmental authority
36 all information, records and documents relating to the Business and the employees of
37 Seller for periods prior to Closing and shall preserve all such information, records and
38 documents until the later of: (a) six (6) years after the Closing; (b) the expiration of all
39 statutes of limitations for taxes for periods prior to the Closing or extensions thereof
40 applicable to Seller for tax information, records or documents; or (c) the required

1 retention period for all government contract information, records or documents. Buyer
2 shall also make available to Seller, as reasonably requested by Seller, personnel
3 responsible for preparing or maintaining information, records and documents, in
4 connection with tax matters, governmental contracts, litigation or potential litigation,
5 including without limitation, claims for workers' compensation, product liability, general
6 insurance liability and automobile insurance liability. Prior to destroying any records
7 related to Seller for the period prior to the Closing Date, Buyer shall notify Seller
8 thirty (30) days in advance of any such proposed destruction of its intent to destroy such
9 records, and Buyer will permit Seller to retain any such records; *provided, however*, that
10 failure to provide such notification shall not constitute a basis for any liability or claim
11 for damages. With respect to any litigation and claims that are Excluded Liabilities,
12 Buyer shall render all reasonable assistance that Seller may request in defending such
13 litigation or claim and shall make available to Seller personnel most knowledgeable about
14 the matter in question.

15
16 ARTICLE X
SURVIVAL AND INDEMNIFICATION

17 10.1 Survival of Representations, Etc.

18 The representations and warranties of Seller contained in this Agreement (in each
19 case, as updated pursuant to Section 6.6 and as in effect on the Closing Date) shall
20 survive the Closing Date but shall terminate _____ after the Closing Date except to
21 the extent that claims relating to breach of any such representation or warranty have been
22 made in writing in reasonable detail prior to the expiration of such period. No claim may
23 be made with respect to any alleged breach of a representation or warranty of Seller
24 contained in this Agreement, whether for indemnification in respect thereof or otherwise,
25 unless written notice of such claim setting forth the alleged breach and resulting claimed
26 damages in reasonable detail, is given to Seller within the _____ period following
27 the Closing. The election by any party to consummate the transactions contemplated by
28 this Agreement, notwithstanding such party's actual knowledge of the inaccuracy of any
29 representation or warranty contained herein, shall constitute a waiver by such party of
30 any claim for indemnification arising out of such breach of such representation or
31 warranty.

32 10.2 Indemnifications

33 (a) By Seller.

34 Seller shall indemnify Buyer and its Representatives and Affiliates, and
35 hold each of them harmless from and against any and all Damages incurred by any of
36 them in connection with, arising out of, or resulting from (i) any breach of any
37 representation or warranty made by Seller in this Agreement (in each case, as updated
38 pursuant to Section 6.6 as in effect on the Closing Date); or (ii) any failure by Seller to
39 perform in a timely manner any agreement, covenant (other than the covenant of Seller
40 contained in Section 6.8) or obligation of Seller pursuant to this Agreement; *provided,*
41 *however*, in each case, that Damages shall not include, and Seller shall not be liable for,

1 any Damages arising out of any condition which resulted in an adjustment reflected in the
2 Final Purchase Price pursuant to Section 2.4 of this Agreement.

3 (b) By Buyer.

4 Buyer shall indemnify Seller and its Representatives and Affiliates, and
5 hold each of them harmless from and against any and all Damages incurred by any of
6 them in connection with, arising out of or resulting from (i) any breach or inaccuracy of
7 any representation or warranty made by Buyer in this Agreement (as updated pursuant to
8 Section 6.6 and as in effect on the Closing Date) or (ii) any failure by Buyer to perform in
9 a timely manner any agreement, covenant (other than the covenant of Buyer contained in
10 Section 6.8) or obligation of Buyer pursuant to this Agreement.

11 (c) Defense of Claims.

12 If a claim for Damages (a "Claim") is proposed to be made by a party
13 entitled to indemnification hereunder (the "Indemnified Party") against the party from
14 whom indemnification is claimed (the "Indemnifying Party"), the Indemnified Party shall
15 give written notice (a "Claim Notice") to the Indemnifying Party as soon as practicable
16 after the Indemnified Party becomes aware of any fact, condition or event which may
17 give rise to Damages for which indemnification may be sought under this Section 10.2.
18 If any lawsuit or enforcement action is filed against any party entitled to the benefit of
19 indemnity hereunder, written notice thereof shall be given to the Indemnifying Party as
20 promptly as practicable (and in any event within ten (10) business days after the service
21 of the citation or summons). The failure of any Indemnified Party to give timely notice
22 hereunder shall not affect rights to indemnification hereunder, except to the extent that
23 the Indemnifying Party demonstrates actual damage caused by such failure.
24 Notwithstanding the foregoing, a Claim Notice that relates to a representation or warranty
25 that is subject to the survival period set forth in Section 10.1 must be made within such
26 survival period, whether or not the Indemnifying Party is prejudiced by any failure to
27 give a Claim Notice relating thereto. A Claim Notice shall describe in reasonable detail
28 the nature of the Claim, including an estimate of the amount of Damages that have been
29 or may be suffered or incurred by the Indemnified Party attributable to such Claim, the
30 basis of the Indemnified Party's request for indemnification under the Agreement and all
31 information in the Indemnified Party's possession relating to such Claim. After receipt of
32 such Claim Notice, the Indemnifying Party shall be entitled, if it so elects, at its own cost,
33 risk and expense, (i) to take control of the defense and investigation of such lawsuit or
34 action and (ii) to employ and engage attorneys of its own choice to handle and defend the
35 same. If the Indemnifying Party fails to assume the defense of such Claim within
36 ten (10) business days after receipt of the Claim Notice, the Indemnified Party against
37 which such Claim has been asserted will (upon delivering notice to such effect to the
38 Indemnifying Party) have the right to undertake, at the Indemnifying Party's cost and
39 expense, the defense, compromise or settlement of such Claim on behalf of and for the
40 account and risk of the Indemnifying Party; *provided, however*, that such Claim shall not
41 be compromised or settled without the written consent of the Indemnifying Party, which
42 consent shall not be unreasonably withheld. The party that assumes the defense of the
43 Claim, shall keep the other party reasonably informed of the progress of any such

1 defense, compromise or settlement. Notwithstanding the foregoing, the Indemnified
2 Party shall be entitled to conduct its own defense at the cost and expense of the
3 Indemnifying Party if the Indemnified Party establishes that the conduct of its defense by
4 the Indemnifying Party would reasonably be likely to prejudice materially the
5 Indemnified Party due to a conflict of interest between the Indemnified Party and the
6 Indemnifying Party or their legal counsel; and *provided further* that in any event the
7 Indemnified Party may participate in such defense at its own expense.

8 (d) Settlement.

9 In the event that the Indemnified Party settles any Claim without the prior
10 written consent of the Indemnifying Party, the Indemnifying Party shall have no further
11 indemnification obligations under this Section 10.2 with respect to such Claim; *provided,*
12 *however,* that if the Indemnifying Party refuses to defend or otherwise handle such Claim
13 and it is subsequently determined that the Indemnifying Party is or was obligated to
14 defend or indemnify the Indemnified Party with respect to such Claim, then the
15 Indemnifying Party shall remain obligated with respect to such settlement amount. If the
16 Indemnifying Party shall control the defense of any such Claim, the Indemnifying Party
17 shall obtain the prior written consent of the Indemnified Party (which shall not be
18 unreasonably withheld) before entering into any settlement of a Claim or ceasing to
19 defend such Claim if, pursuant to or as a result of such settlement or cessation, injunctive
20 or other equitable relief shall be imposed against the Indemnified Party or if such
21 settlement or cessation does not expressly and unconditionally release the Indemnified
22 Party from all liabilities and obligations with respect to such Claim, without prejudice. In
23 the event that the Indemnifying Party proposes a settlement to any Claim with respect to
24 which the Indemnifying Party is or was entitled to defend, which settlement is
25 satisfactory to the party instituting such Claim, and the Indemnified Party withholds its
26 consent to such settlement, and thereafter a final judgment is entered against the
27 Indemnifying Party or Indemnified Party pursuant to which Damages exceed the amount
28 of the proposed settlement, then in such case the Indemnifying Party shall have no
29 obligation to indemnify the Indemnified Party under this Section 10.2 against and in
30 respect of the amount by which the Damages resulting from such final judgment exceed
31 the amount of the proposed settlement.

32 (e) Mitigation.

33 Each Indemnified Party shall have an obligation to mitigate Damages
34 under this Agreement, and to that end each party shall use all commercially reasonable
35 efforts and shall consult and cooperate with each other with a view towards mitigating
36 claims, losses, liabilities, Damages, deficiencies, costs and expenses that may give rise to
37 claims for indemnification under this Section 10.2.

38 (f) Cooperation.

39 In the event that any action, suit, proceeding or investigation relating
40 hereto, the Excluded Liabilities or to the transactions contemplated by this Agreement is
41 commenced, whether before or after the Closing, the parties hereto agree to cooperate

1 and use reasonable efforts to vigorously defend against and respond thereto and make
2 available to each other such personnel, witnesses, books, records, documents or other
3 information within its control that are necessary or appropriate for such defense (except
4 for trade secrets and such items which may not be made available pursuant to a Court
5 Order); *provided* that, subject to Section 10.2(c), the Indemnifying Party shall reimburse
6 the Indemnified Party for its out-of-pocket expenses incurred in connection therewith.

7 (g) Product and Warranty Liability.

8 The provisions of this Section 10.2 shall cover, without limitation, all
9 liabilities of any kind, nature or description relating, directly or indirectly, to product
10 liability, litigation or claims against Buyer or Seller in connection with, arising out of, or
11 relating to Purchased Products.

12 (h) Limitations.

13 (i) Neither Buyer nor Seller shall be liable to the other
14 under this Section 10.2 for any Damages due pursuant to Section 10.2(a)(i) or
15 Section 10.2(b)(i) exclusively, unless and until (i) each individual amount otherwise due
16 the Indemnified Party exceeds \$_____ (excluding legal fees and expenses), and (ii) the
17 aggregate amount of all such Damages under this Agreement, the Transition Trademark
18 License and the Intellectual Property Purchase and License Agreement otherwise due the
19 Indemnified Party (excluding Damages incurred in any individual claim of less than
20 \$_____) exceeds an accumulated total of ____ percent (____%) of the Aggregate
21 Amount, and thereafter the total amount of all such Damages in excess of \$_____ per
22 claim (excluding legal fees and expenses) actually incurred (excluding the first one
23 percent of the Aggregate Amount) shall be indemnifiable as and to the extent herein
24 provided.

25 (ii) Seller's aggregate liability under (I) Sections 10.2(a)
26 and 10.3 of this Agreement, (II) Section 8 of the Transition Trademark License and (III)
27 Section 5.2(a) of the Intellectual Property Purchase and License Agreement for all claims
28 for Damages incurred by Buyer (and its Representatives and Affiliates) shall not in any
29 event exceed an accumulated total of ____ percent (____%) of the Aggregate Amount.

30 (iii) Except for Buyer's indemnification obligations resulting
31 from a breach of Buyer's covenants in Section 6, in no event shall any party be liable for
32 any incidental, consequential, indirect or special losses or damages (including, without
33 limitation, lost profits, lost revenues and loss of business), whether foreseeable or not,
34 whether or not the party has been advised of the possibility of any such damages and
35 whether or not the same are occasioned by any failure to perform or the breach of any
36 representation, warranty, covenant or other obligation under this Agreement for any
37 cause whatsoever.

38 (i) Indemnification Rights of Certain Persons.

39 Buyer agrees that all rights of indemnification and contribution, if any,
40 existing in favor of the present or former officers, directors, employees, fiduciaries and

1 agents of Seller as provided in Seller's Certificate of Incorporation or Bylaws, as in effect
2 as of the date hereof, or any contract with respect to matters occurring prior to the
3 Closing Date, shall survive the Closing Date and shall continue in full force and effect for
4 a period of not less than the applicable statute of limitations.

5 (j) Payment Obligations Not Affected.

6 Nothing herein shall relieve either party of any liability to make any
7 payment expressly required to be made by such party pursuant to this Agreement.

8 (k) General Release.

9 With regard to this Section 10.2, Buyer acknowledges that it has read and
10 is familiar with, and hereby waives the benefit of, the provisions of California Civil Code
11 Section 1542, which is set forth below:

12 "A general release does not extend to claims which the
13 creditor does not know or suspect to exist in his favor at the
14 time of executing the release, which if known by him must
15 have materially affected his settlement with the debtor."

16 (l) Net Damages and Subrogation.

17 (i) Notwithstanding anything contained herein to the
18 contrary, the amount of any Damages incurred or suffered by an Indemnified Party shall
19 be calculated after giving effect to any proceeds, benefits or recoveries obtained by the
20 Indemnified Party (or any of its Affiliates) from any other third party, and Buyer and
21 Seller shall make appropriate adjustments for Tax benefits and costs in determining the
22 amount of such Damages. Each Indemnified Party shall exercise commercially
23 reasonable efforts to obtain such proceeds, benefits and recoveries. If any such proceeds,
24 benefits or recoveries are received by an Indemnified Party (or any of its Affiliates) with
25 respect to any Damages after the Indemnified Party (or any Affiliate) has received the
26 benefit of any indemnification hereunder with respect thereto, the Indemnified Party (or
27 such Affiliate) shall pay to the Indemnifying Party the amount of such proceeds, benefits
28 or recoveries (up to the amount of the Indemnifying Party's payment).

29 (ii) Upon making any payment to an Indemnified Party in
30 respect of any Damages, the Indemnifying Party will, to the extent of such payment, be
31 subrogated to all rights of the Indemnified Party (and its Affiliates) against any third
32 party in respect of the Damages to which such payment related. Such Indemnified Party
33 (and its Affiliates) and Indemnifying Party will execute upon request all instruments
34 reasonably necessary to evidence or further perfect such subrogation rights.

35 10.3 Tax Indemnifications

36 Seller shall pay, or cause to be paid, when due all Taxes for which Seller is or
37 may be liable or that are or may become payable with respect to all taxable periods
38 ending on or prior to the Closing Date pursuant to Section 2.5. Subject to the obligations

1 of Buyer pursuant to Section 2.6, Seller shall indemnify and hold harmless Buyer, its
2 Affiliates, successors and assigns, from and against any and all Taxes of the Seller for
3 any Taxes in respect of the Purchased Assets and income of the Business for the period or
4 portions of periods ending prior to the Closing Date. Buyer shall indemnify and hold
5 harmless Seller, its Affiliates, successors and assigns, from and against any and all Taxes
6 of the Buyer for any Taxes in respect of the Purchased Assets and income of the Business
7 for the period or portions of periods beginning on and after the Closing Date.

8 10.4 Insurance Proceeds

9 With respect to any Claim required to be indemnified pursuant to this Agreement,
10 so long as the Indemnifying Party has complied with its indemnification obligations on
11 such Claim, (a) to the extent available, the Indemnified Party shall assign to the
12 Indemnifying Party any applicable proceeds under any insurance policy which covers the
13 matter which is the subject of the indemnification and shall take reasonable steps to
14 insure that the Indemnifying Party obtains the benefits of such policy, including
15 providing any notices as required under such policy; and (b) if the Indemnified Party
16 receives insurance proceeds with respect to any Damages paid by the Indemnifying Party,
17 then the Indemnified Party shall reimburse the Indemnifying Party in an amount
18 equivalent to such proceeds up to the amount actually paid by the Indemnifying Party.

19 10.5 Exclusive Remedy

20 The rights of Buyer under Section 10.2 shall be the exclusive remedy of Buyer
21 with respect to claims based upon a breach or alleged breach of the representations,
22 warranties and covenants of Seller contained herein or in any other manner relating to the
23 Business or the transactions contemplated hereby. The rights of Seller under
24 Section 10.2 shall be the exclusive remedy of Seller with respect to claims based upon a
25 breach or alleged breach of the representations, warranties and covenants of Buyer
26 contained herein. Except as expressly set forth in this Agreement, neither Seller nor any
27 of its Representatives or Affiliates makes or has made any representations or warranties,
28 express or implied, in connection with the transactions contemplated by this Agreement.
29 Without limiting the generality of the foregoing, except as expressly set forth in this
30 Agreement, (i) the Purchased Assets shall be transferred to Buyer pursuant to this
31 Agreement in their present condition, "AS IS" and without any warranty, express or
32 implied; and (ii) no patent or latent physical condition or defect in any of the Purchased
33 Assets, whether or not now known or discovered, shall affect the rights of either party.

34 10.6 Own Investigation

35 Buyer acknowledges that except for Seller's express representations and
36 warranties set forth in this Agreement, Buyer is relying upon Buyer's own independent
37 investigation of the Purchased Assets in entering into this Agreement and purchasing the
38 Purchased Assets. Buyer acknowledges that prior to the Closing, Buyer will fully and
39 thoroughly investigate and inspect each and every aspect of the Purchased Assets, and all
40 factors relevant thereto, including, without limitation, the physical condition of the
41 Purchased Assets, the Purchased Assets' compliance with all applicable laws, including,

1 but not limited to, Environmental Laws, and the Purchased Assets' fitness for any
2 particular purpose, use or enjoyment.

3 As a further consideration for all of Seller's obligations hereunder, and as an
4 express material inducement to Seller, without which and but for Seller would not enter
5 into this Agreement, Buyer agrees that, except for Seller's express representations and
6 warranties set forth in this Agreement, Buyer is purchasing the Purchased Assets without
7 recourse of any kind, nature or description against Seller, and Buyer hereby expressly
8 releases Seller, Seller's agents, representatives, employees and attorneys from and against
9 any and all loss, claim, cost, contribution, liability, obligation, penalty and expense
10 (including attorneys' fees) and damages, directly or indirectly arising out of, in
11 connection with or related to any present or past condition of the Purchased Assets,
12 including, but not limited to, the existence, use, management, control, handling,
13 manufacturing, creation, generation, storage, disposal, discharge, removal, treatment,
14 containment or remediation of any Hazardous Materials in, on, under or about the
15 Purchased Assets, including, without limitation, the cost of any required or necessary
16 repair, clean-up, remediation or detoxification of the Purchased Assets. Seller expressly
17 disclaims any responsibility for the past or present use, management, control, handling,
18 manufacture, creation, generation, storage, disposal, discharge, removal, treatment,
19 containment, remediation or existence of any Hazardous Materials in, on, under or about
20 the Purchased Assets. Buyer knowingly and voluntarily waives any and all rights,
21 benefits and privileges (including, but not limited to, any rights of contribution under any
22 applicable Environmental Laws) to the fullest extent permissible under any federal, state,
23 local, or other laws which do or would negatively affect the validity or enforceability of
24 all or part of this release.

25 The provisions of this Section 10.6 shall survive the Closing.

26 ARTICLE XI
27 MISCELLANEOUS

28 11.1 Termination

29 (a) Termination.

30 This Agreement may be terminated at any time prior to Closing:

31 (i) By mutual written consent of Buyer and Seller;

32 (ii) By Buyer or Seller if the Closing shall not have
33 occurred on or before _____ days following the date hereof, *provided, however,*
34 that this provision shall not be available to Buyer if Seller has the right to terminate this
35 Agreement under clause (iv) of this Section 11.1, and this provision shall not be available
36 to Seller if Buyer has the right to terminate this Agreement under clause (iii) of this
37 Section 11.1;

38 (iii) By Buyer if there is a material breach of any
39 representation or warranty set forth in Article IV hereof or any covenant (other than the

1 covenant of Seller contained in Section 6.8) or agreement to be complied with or
2 performed by Seller pursuant to the terms of this Agreement or the failure as a result of
3 the actions or inaction of Seller of a condition set forth in Article VIII to be satisfied (and
4 such condition is not waived in writing by Buyer) on or prior to the Closing Date, or the
5 occurrence of any event which results or would result in the failure of a condition set
6 forth in Article VIII (other than the condition set forth in Section 8.3) to be satisfied on or
7 prior to the Closing Date, *provided* that Buyer may not terminate this Agreement prior to
8 the Closing if Seller has not had an adequate opportunity to cure such failure; or

9 (iv) By Seller if there is a material breach of any
10 representation or warranty set forth in Article V hereof or of any covenant (other than the
11 covenant of Buyer contained in Section 6.8) or agreement to be complied with or
12 performed by Buyer pursuant to the terms of this Agreement or the failure as a result of
13 the actions or inaction of Buyer of a condition set forth in Article VII to be satisfied (and
14 such condition is not waived in writing by Seller) on or prior to the Closing Date, or the
15 occurrence of any event which results or would result in the failure of a condition set
16 forth in Article VII (other than for the condition set forth in Section 7.3) to be satisfied on
17 or prior to the Closing Date; *provided* that Seller may not terminate this Agreement prior
18 to the Closing Date if Buyer has not had an adequate opportunity to cure such failure.

19 (b) Effect of Termination.

20 In the event of termination of this Agreement:

21 (i) Each party shall be required promptly to redeliver all
22 documents, work papers and other material of any other party relating to the transactions
23 contemplated hereby, whether so obtained before or after the execution hereof, to the
24 party furnishing the same;

25 (ii) The provisions of the Confidentiality Agreement shall
26 continue in full force and effect; and

27 (iii) No party hereto shall have any Liability to any other
28 party to this Agreement, except as stated in subsections (i), (ii) and (iii) of this
29 Section 11.1(b) and except for any willful breach of this Agreement occurring prior to the
30 proper termination of this Agreement.

31 11.2 Assignment

32 Neither this Agreement nor any of the rights or obligations hereunder may be
33 assigned by any party without the prior written consent of the other party, except that
34 Seller may assign without such prior consent any of its rights or obligations under this
35 Agreement to any one or more of Seller's Affiliates. Subject to the foregoing, this
36 Agreement shall be binding upon and inure to the benefit of the parties hereto and their
37 respective successors and permitted assigns, and no other person shall have any right,
38 benefit or obligation under this Agreement as a third party beneficiary or otherwise.

1 11.3 Notices

2 Any notice, request, demand or other communication which is required or
3 permitted under this Agreement shall be in writing and shall be deemed to have been duly
4 given (a) when received if personally delivered, (b) when transmitted if transmitted by
5 telex or telecopy transmission only during the recipient's normal business hours unless
6 arrangements have otherwise been made to receive such notice by telex or telecopy
7 outside of normal business hours, with confirmation of successful transmission received
8 by the sender, (c) the day after it is sent, if sent for next day delivery to a domestic
9 address by recognized overnight delivery service (e.g., DHL, UPS or Federal Express);
10 and (d) upon receipt, if sent by certified or registered mail, return receipt requested. In
11 each case notice shall be sent as indicated below:

12 If to Seller, addressed to:

13 _____

14 _____

15 _____

16 Attn: _____

17 Fax: _____

18

19 With a copy to:

20 _____

21 _____

22 _____

23 Attn: _____

24 Fax: _____

25

26 If to Buyer, addressed to:

27 [_____]

28 [_____]

29 [_____]

30 Attn: [_____]

31 Tel: [_____]

32 Fax: [_____]

33

34 With a copy to:

35 [_____]

36 [_____]

37 [_____]

38 Attn: [_____]

39 Tel: [_____]

40 Fax: [_____]

41

1 or to such other place and with such other copies as either party may designate as to itself
2 by written notice to the others.

3 11.4 Choice of Law

4 This Agreement shall be construed, interpreted and the rights of the parties
5 determined in accordance with the laws of the State of California (without reference to its
6 choice of law provisions).

7 11.5 Jurisdiction; Services of Process

8 Any action or proceeding seeking to enforce any provision of, or based on any
9 right arising out of, this Agreement may be brought against any of the parties in the
10 courts of the State of California, County of Los Angeles, or, if it has or can acquire
11 jurisdiction, in the United States District Court for the Southern District of California,
12 and each of the parties consents to the jurisdiction of such courts (and of the appropriate
13 appellate courts) in any such action or proceeding and waives any objection to venue laid
14 therein. Process in any action or proceeding referred to in the preceding sentence may be
15 served on any party anywhere in the world.

16 11.6 Mediation

17 In the event of any controversy or dispute related to or arising out of this
18 Agreement, the parties agree to promptly meet and confer in good faith to attempt to
19 resolve the controversy or dispute without an adversarial proceeding. Upon the mutual
20 agreement of the parties, if the controversy or dispute is not resolved, the parties may
21 submit the controversy or dispute to non-binding mediation upon terms to be mutually
22 agreed by the parties at the time of the mediation. The parties reserve the right to contest
23 the mediator's decision in a formal judicial process.

24 11.7 Entire Agreement; Amendments and Waivers

25 This Agreement, the Ancillary Agreements, the Intellectual Property Purchase
26 and License Agreement and the Transition Trademark License, together with all exhibits
27 and schedules hereto and thereto (including the Disclosure Schedules), and the
28 Confidentiality Agreement, constitute the entire agreement among the parties pertaining
29 to the subject matter hereof and thereof and supersede all prior agreements,
30 understandings, negotiations and discussions, whether oral or written, of the parties. This
31 Agreement may not be amended except by an instrument in writing signed on behalf of
32 each of the parties hereto. No amendment, supplement, modification or waiver of this
33 Agreement shall be binding unless executed in writing by the party to be bound thereby.
34 No waiver of any of the provisions of this Agreement shall be deemed or shall constitute
35 a waiver of any other provision hereof (whether or not similar), nor shall such waiver
36 constitute a continuing waiver unless otherwise expressly provided.

1 11.8 Multiple Counterparts

2 This Agreement may be executed in one or more counterparts, each of which shall
3 be deemed an original, but all of which together shall constitute one and the same
4 instrument.

5 11.9 Expenses

6 Except as otherwise specified in this Agreement, each party hereto shall pay its
7 own legal, accounting, out-of-pocket and other expenses incident to this Agreement and
8 to any action taken by such party in preparation for carrying this Agreement into effect.

9 11.10 Invalidity

10 In the event that any one or more of the provisions contained in this Agreement or
11 in any other instrument referred to herein, shall, for any reason, be held to be invalid,
12 illegal or unenforceable in any respect, then to the maximum extent permitted by law,
13 such invalidity, illegality or unenforceability shall not affect any other provision of this
14 Agreement or any other such instrument.

15 11.11 Publicity

16 No party shall issue any press release or make any public statement regarding the
17 transactions contemplated hereby, without prior written approval of the other party.

18 11.12 Confidential Information

19 Except as required by applicable law, all information related to the Business
20 supplied to Buyer by Seller shall be maintained in strict confidence by Buyer and its
21 Representatives in accordance with the Confidentiality Agreement, and in the event that
22 this Agreement is terminated, all written materials relating thereto shall be returned to
23 Seller or destroyed as provided in the Confidentiality Agreement and Buyer shall deliver
24 an officer's certificate to Seller certifying as to such return or destruction. In such event,
25 Buyer and its Representatives shall make no further use of such information whatsoever.

26 11.13 No Third-Party Beneficiary

27 The provisions of this Agreement are for the benefit only of the parties hereto,
28 and no third party may seek to enforce, or benefit from, these provisions. The parties
29 specifically disavow any desire or intention to create any third party beneficiary
30 hereunder, and specifically declare that no person or entity, except for the parties and
31 their successors, shall have any right hereunder nor any right of enforcement hereof.

32 11.14 Representation of Counsel; Mutual Negotiation

33 Each party has had the opportunity to be represented by counsel of its choice in
34 negotiating this Agreement. This Agreement shall therefore be deemed to have been
35 negotiated and prepared at the joint request, direction, and construction of the parties, at

1 arm's-length, with the advice and participation of counsel, and will be interpreted in
2 accordance with its terms without favor to any party. The parties' respective counsel may
3 not be disqualified from representing their clients in indemnification or other disputes
4 arising out of this transaction by virtue of such counsel's prior representation of the other
5 party in an unrelated matter.

6 11.15 No Reliance on Other Information

7 Except for the representations and warranties contained in this Agreement, neither
8 Seller nor any Representative or Affiliate or other person acting for any of them makes
9 any other representation or warranty, express or implied, with respect to the Purchased
10 Assets, the Business, or its financial condition or prospects or the execution, delivery or
11 performance by Seller of this Agreement or with respect to the transactions contemplated
12 hereby, and Seller hereby disclaims any such representation or warranty, whether oral or
13 written, whether by Seller or any of its respective Representatives or Affiliates or any
14 other person. Buyer acknowledges that none of Seller or any other person has made any
15 representation or warranty, express or implied, as to the accuracy or completeness of any
16 information regarding Seller not included in this Agreement or the Seller's Disclosure
17 Schedule attached hereto, and neither Seller nor any other person will have or be subject
18 to any liability to Buyer or any other person resulting from the distribution to Buyer, or
19 Buyer's use of, any such information (including, without limitation, any brochures,
20 offering memoranda or other publications distributed in connection with the sale of
21 Purchased Assets or in any presentation by the management of Seller and any estimates
22 of anticipated performance of the Business.)

23 11.16 Bulk Transfer Laws

24 Buyer acknowledges that Seller will not comply with the provisions of any bulk
25 transfer laws of any jurisdiction in connection with the transactions contemplated by this
26 Agreement.

27 11.17 Facsimile Signatures

28 Any signature page delivered by a fax machine or telecopy machine shall be
29 binding to the same extent as an original signature page, with regard to any agreement
30 subject to the terms hereof or any amendment thereto. Any party who delivers such a
31 signature page agrees to later deliver an original counterpart to any party which requests
32 it.

33 *[signature page follows]*

34

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
2 duly executed on their respective behalf, by their respective officers thereunto duly
3 authorized, all as of the day and year first above written.

[NAME OF SELLER]

[NAME OF BUYER]

BY _____

BY _____

NAME: _____

NAME: _____

ITS _____

ITS _____

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ASSET PURCHASE AGREEMENT

by and between

[_____]

as "Seller"

and

[_____]

as "Buyer"

Dated as of [_____] , 200__

