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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): **June 1, 2003**

ASPEN TECHNOLOGY, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	**0-24786**	**04-2739697**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

Ten Canal Park, Cambridge, Massachusetts 02141
(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code: **(617) 949-1000**

On June 2, 2003, we issued a press release announcing a proposed preferred stock financing of Aspen Technology, Inc. A summary of the material terms of the financing are provided below. In addition, we have scheduled a conference call on June 2, 2003 at 8:30 a.m., Eastern time, to provide further details of the preferred stock financing. Copies of a script of the webcast call and materials to be furnished during the webcast are attached hereto as exhibits.

ITEM 5. OTHER EVENTS AND REQUIRED FD DISCLOSURE.

On June 1, 2003, we entered into a securities purchase agreement (the "Purchase Agreement") for the private placement of certain of our securities to several investment partnerships managed by Advent International Corporation (the "Advent Investors") and the holders of our outstanding shares of Series B preferred stock (the "Series B Investors") pursuant to which we will:

- issue and sell 300,300 shares of Series D-1 preferred stock to the Advent Investors for a purchase price of $333.00 per share and an aggregate consideration of approximately $100,000,000,
- issue warrants to the Advent Investors to purchase 6,006,006 shares of our common stock,
- issue 63,064 shares of Series D-2 preferred stock to certain of the Series B Investors in exchange for the repurchase of 16,918 shares of Series B-I preferred stock and 7,788 shares of Series B-II preferred stock currently held by certain of the Series B Investors; and
- issue warrants to certain of the Series B Investors to purchase 1,261,280 shares of our common stock.

Simultaneously with the signing of the Purchase Agreement, we entered into a repurchase and exchange agreement (the "Repurchase Agreement") pursuant to which we will:

- repurchase 23,082 shares of Series B-I preferred stock and 12,212 shares of B-II preferred stock for an aggregate of approximately $30 million in cash, and
- issue new warrants to the Series B Investors to purchase 791,044 shares of our common stock in exchange for outstanding warrants to purchase the same number of shares of our common stock currently held by the Series B Investors.

The initial stated value for the Series B preferred stock being exchanged pursuant to the Purchase Agreement is approximately

$24.7 million and the initial stated value for the Series B preferred stock being redeemed pursuant to the Repurchase Agreement is approximately $35.3 million. The transactions contemplated by the Purchase Agreement and the Repurchase Agreement are required to be closed simultaneously at a closing we expect to occur in August 2003. Upon closing, there will be no shares of Series B preferred stock outstanding. The Series D-1 preferred stock and the Series D-2 preferred stock are referred to collectively as the Series D preferred stock. The Series B-I preferred stock and the Series B-II preferred stock are referred to collectively as the Series B preferred stock. The warrants that will be issued to the Advent Investors and certain of the Series B Investors pursuant to the Purchase Agreement to purchase a total of 7,267,286 shares of our common stock are referred to as the WD Warrants and the warrants that will be issued to the Series B Investors pursuant to the Repurchase Agreement to purchase 791,044 shares of our common stock are referred to as the WB Warrants.

Purchase Agreement

The Purchase Agreement contemplates the simultaneous closing of the transactions contemplated by the Purchase Agreement and Repurchase Agreement. The issuance of the Series D preferred stock and the other transactions contemplated by the Purchase Agreement are subject to several closing conditions, including the approval of our stockholders and approval under the Hart-Scott-Rodino Act.

If we do not obtain stockholder approval or the approval under the Hart-Scott-Rodino Act for the transactions contemplated by the Purchase Agreement, then the Purchase Agreement may be terminated by certain of the parties thereto. If the Purchase Agreement is terminated, we will not issue the Series D preferred stock and WD Warrants, we will not receive any consideration for such Series D preferred stock and WD Warrants, and the Series B preferred stock will remain outstanding.

Series D Certificate of Designations

The Series D preferred stock has a stated value of $333.00 per share and bear a cumulative dividend of 8% per annum. Dividends on the Series D preferred stock are payable only when, as and if declared by our board of directors and may be paid, at our option, either in cash or, commencing in 2004, through the issuance of shares of our common stock. Holders of the Series D-1 preferred stock are entitled, exclusively and as a separate class, to elect directors to our board of directors based on a formula set forth in the Series D Certificate of Designations, provided such number of directors is less than fifty percent of the board of directors. Immediately following the consummation of the transactions contemplated by the Purchase Agreement, we anticipate that our board of directors will be comprised of 9 members and that the holders of Series D-1 preferred stock will be entitled to designate up to 4 of those 9 members, who shall initially be Douglas A. Kingsley, Michael Pehl and one or two other designees to be designated on or about the closing. At the option of the holder, each share of Series D preferred stock is convertible into 100 shares of our common stock, subject to a formula adjustment if we issue certain additional securities at a price per share of less than $3.33 (subject to adjustment for our one-for-three reverse stock split and other similar events). Holders of the Series D preferred stock may request that 50% of such shares be redeemed by us any time on or after the sixth anniversary of the closing for $333.00 per share plus any accrued but unpaid dividends, and the remaining shares of Series D preferred stock be redeemed on or after the seventh anniversary of the closing for $333.00 per share plus any accrued but unpaid dividends. The Series D preferred stock may also be redeemed for $416.25 per share plus any accrued but unpaid dividends at our option any time on or after the third anniversary of the closing of the transactions contemplated by the Purchase Agreement, provided that certain conditions are met, including the condition that the daily volume weighted average trading price of our common stock on the NASDAQ National Market for a period of 45 consecutive trading days exceeds $7.60 per share (subject to adjustment for our one-for-three reverse stock split and other similar events). These and other terms and provisions of the Series D preferred stock are set forth in the Series D Certificate of Designations that will form a part of our Certificate of Incorporation. The Series D Certificate of Designations will be filed with the Secretary of State of the State of Delaware upon the consummation of the transactions contemplated by the Purchase Agreement.

Registration, Preemptive and Other Rights

Simultaneously with the consummation of the transactions contemplated by the Purchase Agreement, we will enter into an investor rights agreement (the "Investor Rights Agreement") pursuant to which we will grant the holders of Series D preferred stock, among other things, certain registration rights, preemptive rights upon the future issuance of certain of our securities, and, with respect to the holders of Series D-1 preferred stock, the right to elect the number of directors based upon the number of votes to which the holders of Series D-1 preferred stock are entitled, as set forth in the Series D Certificate of Designations, provided such number is less than fifty percent of the board of directors. All shares of common stock issuable upon the conversion of the Series D preferred stock and issued as dividends on the Series D preferred stock and upon the exercise of either the WB Warrants or WD Warrants are subject to either (1) in the case of the Advent Investors, the right to demand up to four registration statements covering such shares or (2) in the case of the Series B Investors, the right to have such shares included in a resale registration statement for an offering to be made on a continuous basis for a period of up to two years. We will also grant to those holders of our

Series D preferred stock who qualify as accredited investors certain preemptive rights to participate in future issuances of certain of our securities until such time as such accredited investors hold less than ten percent of the Series D preferred stock issued pursuant to the Purchase Agreement.

WD Warrants

The WD Warrants are exercisable any time after their issuance but before the seventh anniversary of their issuance for an aggregate of 7,267,286 shares of our common stock at an exercise price of $3.33 per share. The exercise price of the WD Warrants and the number of

shares of common stock for which they are exercisable are subject to formula adjustment (1) for our one-for-three reverse stock split and (2) if we issue certain additional securities at a price less than $3.33 per share.

Use of Proceeds

Pursuant to the terms of the Purchase Agreement, we will use the proceeds (net of fees) from the sale of the Series D-1 preferred stock for (1) the repurchase of 23,082 shares of Series B-I preferred stock and 12,212 shares of Series B-II preferred stock as set forth in the Repurchase Agreement, (2) the repurchase of our outstanding 5 1/4% convertible subordinated debentures on or prior to maturity and (3) for general working capital purposes, not to exceed $15,000,000. The Advent Investors will have the right to consent to any additional use of the proceeds from the sale of the Series D-1 preferred stock.

Repurchase Agreement

The Series B preferred stock subject to the Repurchase Agreement will be repurchased at a price of $850 per share plus an amount equal to the accrued dividends. In addition, we have agreed that if the transactions contemplated by the Purchase Agreement are not consummated and the holders of Series B preferred stock request redemption of their Series B preferred stock on or prior to December 31, 2003, or if later, 30 days after the termination of the Repurchase Agreement, we are required to issue to them as many shares of common stock as we are currently able to satisfy the redemption request and seek the approval of our stockholder to enable us to issue all shares of our common stock that we may be required to issue to the Series B Investors in the future. If we do not receive stockholder approval, only then may we issue shares of our Series C preferred stock to satisfy our redemption obligations to the Series B Investors. If we issue Series C preferred stock to the Series B Investors because of an event that occurs in 2003 or, if later, 30 days after the termination of the Repurchase Agreement, the Series B Investors will have the right to exchange the Series C preferred stock for senior subordinated notes (the "Senior Subordinated Notes"). The Senior Subordinated Notes will have a five-year maturity and bear interest at 10% per annum. Under no circumstances will we be required to issue Senior Subordinated Notes in an amount that exceeds $60,000,000 less the amount of cash and value of common stock we have paid to the holders of Series B preferred stock to satisfy their redemption rights. If the Senior Subordinated Notes are issued, we will be limited in the amount of future debt that we can incur.

WB Warrants

In connection with the Repurchase Agreement, we will exchange WB Warrants for the convertible warrants currently outstanding and held by the holders of Series B preferred stock. The WB Warrants are exercisable any time after their issuance but before the fourth anniversary of their issuance for an aggregate of 791,044 shares of our common stock at an exercise price of $4.08 per share. The exercise price of the WB Warrants and the number of shares of common stock for which they are exercisable are subject to formula adjustment (1) for our one-for-three reverse stock split and (2) if we issue certain additional securities at a price per share less than $4.08.

Related Transactions

In connection with its review and approval of the transactions contemplated by the Purchase Agreement, our board of directors has authorized certain amendments set forth in the Certificate of Amendment, including (1) a one-for-three reverse stock split of our outstanding common stock and preferred stock, (2) an increase in the number of shares of common stock and preferred stock authorized for issuance and (3) a reduction in the par value of our common stock. Our board of directors and Compensation Committee have also approved a new compensation plan (the "Compensation Plan") that contemplates (1) the adoption of a new stock incentive plan, (2) an amendment to our director stock option plan and (3) a compensation arrangement with certain of our executive officers and directors, including those directors designated by the holders of Series D-1 preferred stock.

Stockholder Approval

Our stockholders will be asked to approve the transactions contemplated by the Purchase Agreement, the Certificate of Amendment (including a one-for-three reverse stock split, an increase in the number of shares of common stock and preferred stock authorized for issuance and a reduction in the par value of the common stock and preferred stock) and the adoption of a new stock incentive plan and an amendment to our director stock option plan as contemplated by the Compensation Plan at a special meeting of stockholders. If approved by our stockholders in connection with their approval of the transactions contemplated by the Purchase Agreement, we will have authorization to issue, after appropriate adjustment for the one-for-three reverse stock split, 100,000,000 shares of our common stock and 10,000,000 shares of our preferred stock, and will reserve shares of common stock for issuance pursuant to the new stock incentive plan and additional shares for issuance pursuant to our existing director stock option plan.

In addition, our directors, certain members of management and holders of our Series B preferred stock have entered into voting agreements with us pursuant to which such stockholders have agreed to vote their shares of common stock and preferred stock in favor of the matters to be considered by the stockholders at our special meeting of stockholders (the "Voting Agreements"). We expect that the special meeting of stockholders will occur in August 2003.

Additional Matters

If we terminate or otherwise fail to consummate the transactions contemplated by the Purchase Agreement under specified circumstances, then we are required to pay the reasonable fees and expenses of the Advent Investors and their legal counsel, accountants and financial advisors, provided that such reimbursement shall not exceed $1,850,000 in the aggregate. In some circumstances, including if we terminate the Purchase Agreement in order to pursue an alternative equity financing or a change in control transaction or if our board of

directors withdraws its recommendation to the stockholders to approve the transactions contemplated by the Purchase Agreement, we are required to pay to the Advent Investors a termination fee of $3,000,000 less any amount paid to reimburse the Advent Investors for expenses incurred in connection with the negotiation and preparation of the Purchase Agreement and related agreements. We have the right to pay the termination fee in shares of our common stock. If we elect to pay the termination fee in common stock, the fee will increase by $50,000.

The description of the terms and provisions of the Purchase Agreement, Repurchase Agreement, Investor Rights Agreement, Series D Certificate of Designations, Voting Agreements, WD Warrants, WB Warrants, Senior Subordinated Notes and Certificate of Amendment set forth herein do not purport to be complete and are subject to, and are qualified in their entirety by reference to, the

detailed provisions of those documents. Copies of these documents are filed as exhibits to this Current Report on Form 8-K.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(a) *Financial Statements of Business Acquired.*

Not applicable.

(b) *Pro Forma Financial Information.*

Not applicable.

(c) *Exhibits.*

Exhibit Number	Description
4.1	Form of Certificate of Amendment of Certificate of Incorporation
4.2	Form of Certificate of Designations of Series D-1 Convertible Preferred Stock and Series D-2 Convertible Preferred Stock
99.1	Securities Purchase Agreement dated June 1, 2003 by and among Aspen Technology, Inc. and the Purchasers listed therein
99.2	Repurchase and Exchange Agreement dated as of June 1, 2003 by and among Aspen Technology, Inc. and the Holders named therein
99.3	Form of Voting Agreements dated as of June 1, 2003 by and between Aspen Technology, Inc. and certain stockholders of Aspen Technology, Inc.
99.4	Form of Investor Rights Agreement to be entered into by and among Aspen Technology, Inc. and the Purchasers named therein
99.5	Form of WD Common Stock Purchase Warrant to be issued by Aspen Technology, Inc.
99.6	Form of WB Common Stock Purchase Warrant to be issued by Aspen Technology, Inc.
99.7	Form of Senior Subordinated Promissory Note to be issued by Aspen Technology, Inc.
99.8	Script for conference call held on June 2, 2003 by Aspen Technology, Inc.
99.9	Presentation materials to be used for conference call held on June 2, 2003 by Aspen Technology, Inc.

SIGNATURE

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

Date: June 2, 2003 ASPEN TECHNOLOGY, INC.

By: /s/ LISA W. ZAPPALA

Lisa W. Zappala
Senior Vice President and Chief Financial Officer

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EXHIBIT 4.1

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ASPEN TECHNOLOGY, INC.

PURSUANT TO SECTION 242 OF THE GENERAL CORPORATION LAW
OF THE STATE OF DELAWARE

Aspen Technology, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

At a meeting of the Board of Directors of the Corporation a resolution was duly adopted, pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth an amendment to the Certificate of Incorporation of the Corporation, as amended to date, and declaring said amendment to be advisable. The stockholders of the Corporation duly adopted said amendment at a special meeting of stockholders in accordance with Section 242 of the General Corporation Law of the State of Delaware. The resolution setting forth the amendment is as follows:

RESOLVED: That Article FOURTH of the Certificate of Incorporation of the Corporation, as amended, be deleted in its entirety and the following paragraphs shall be inserted in lieu thereof:

"FOURTH: That, effective at 5:00 pm., eastern time, on the filing date of this Certificate of Amendment of Certificate of Incorporation, as amended (the "Effective Time"), a one-for-three reverse stock split of the Corporation's common stock shall become effective, pursuant to which each three shares of common stock outstanding and held of record by each stockholder of the Corporation (including treasury shares) immediately prior to the Effective Time shall be reclassified and combined into one share of common stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of common stock from and after the Effective Time. No fractional shares of common stock shall be issued as a result of such reclassification and combination. In lieu of any fractional shares to which the stockholder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of the common stock as determined by the Board of Directors of the Corporation.

The Corporation is authorized to issue two classes of capital stock, one of which is designated as common stock, $.001 par value per share ("Common Stock"), and the other of which is designated as preferred stock, $0.10 par value per share ("Preferred Stock"). The total number of shares of both classes of capital stock that the Corporation shall have authority to issue is 110,000,000 shares, consisting of 100,000,000 shares of Common Stock and 10,000,000 shares of Preferred Stock. The following is a statement of the designations and the powers, preferences and rights of, and the qualifications, limitations or restrictions applicable to, each class of capital stock of the Corporation."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its President and Chief Executive Officer as of _____, 2003.

ASPEN TECHNOLOGY, INC.

By:

David L. McQuillin
President and Chief Executive Officer

EXHIBIT 4.2

ASPEN TECHNOLOGY, INC.

CERTIFICATE OF DESIGNATIONS
OF
SERIES D-1 CONVERTIBLE PREFERRED STOCK
AND
SERIES D-2 CONVERTIBLE PREFERRED STOCK
(PURSUANT TO SECTION 151 OF THE DELAWARE GENERAL CORPORATION LAW)

Aspen Technology, Inc., a Delaware corporation (the "Corporation"), in accordance with the provisions of Section 103 of the Delaware General Corporation Law, does hereby certify that the following resolution was duly adopted by the Board of Directors of the Corporation as of June 1, 2003, in accordance with Section 141(c) of the Delaware General Corporation Law:

RESOLVED, that two series of Preferred Stock, Series D-1 Convertible Preferred Stock, par value $0.10 per share, and Series D-2 Convertible Preferred Stock, par value $0.10 per share, of the Corporation are hereby created and the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation of the Corporation that are applicable to the Preferred Stock of all classes and series) are as follows:

SERIES D-1 CONVERTIBLE PREFERRED STOCK
AND
SERIES D-2 CONVERTIBLE PREFERRED STOCK

A total of 302,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series D-1 Convertible Preferred Stock" ("Series D-1 Preferred Stock") and a total of 65,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series D-2 Convertible Preferred Stock" ("Series D-2 Preferred Stock," and together with the Series D-1 Preferred Stock, "Series D Preferred Stock"), with each series having the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. DIVIDENDS

(a) DIVIDEND RATE. The holders of shares of Series D Preferred Stock shall be entitled, out of funds legally available therefor, to receive cumulative dividends at the rate per annum equal to 8% (subject to adjustment in accordance with Section 6(a) and 6(b) below) of $333.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination, split-up, recapitalization and like occurrences on or after the Series D Original Issue Date (as defined below) affecting such shares, the "Stated Value"), payable only when, as and if declared by the Board of Directors of the Corporation. Such dividends shall be calculated on the basis of a 365-day year, shall accumulate daily commencing on the Series D Original Issue Date, shall compound quarterly to the extent not previously paid, and shall accumulate from the date of issuance of a share of Series D Preferred Stock until such share is no longer outstanding. Furthermore, such dividends shall be deemed to accumulate from the Series D Original Issue Date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

(b) DIVIDEND PAYMENTS

(i) Dividends declared on Series D Preferred Stock by the Board of Directors of the Corporation pursuant to Subsection 1(a) above shall be payable in cash, except that, in the sole discretion of the Corporation (subject to Subsection 1(b)(ii) below), such dividends may be paid in Common Stock, par value $0.10 per share, of the Corporation ("Common Stock") as follows: Following the end of any calendar quarter, commencing with the quarter ending March 31, 2004, if the Board elects to pay a dividend, then the Corporation shall deliver, by no later than the twentieth day following the end of such calendar quarter (such twentieth day after the calendar quarter being the "Quarterly Deadline"), a written notice to each of the holders of Series D Preferred Stock advising such holders that the Corporation has elected, pursuant to this paragraph (i), to pay all or any portion of the dividends accumulated on the Series D Preferred Stock through the final day of such calendar quarter (such final day of the calendar quarter being the "Record Date"). If the Corporation delivers such a notice, the Corporation shall pay such dividend on the twenty-fourth Trading Day following the applicable Quarterly Deadline. Any such dividend shall be payable in cash, except to the extent that the notice delivered with respect thereto specifies that an amount (which may be up to all) of such dividend shall be paid by the delivery of shares of Common Stock to holders of Series D Preferred Stock as of the Record Date (or, if such day is not a Trading Day, then the immediately preceding Trading Day, as defined below). If the Corporation elects to pay less than all of such accumulated dividends, an equal amount of the dividends declared shall be paid with respect to each share of Series D Preferred Stock and the form of payment (that is, cash, Common Stock or a combination thereof) shall be identical with respect to each share of Series D Preferred Stock. The number of shares of Common Stock issuable in payment of any such dividends to be paid in Common Stock shall be calculated as set forth in Subsection 1(b)(iii) below, and the shares shall be delivered as set forth in Subsection 1(b)(iv) below.

(ii) Notwithstanding any other provision hereof, the Corporation shall not be entitled to pay a dividend in Common Stock with respect to shares of Series D Preferred Stock pursuant to Subsection 1(b)(i) above or Section 4(b) below unless, with respect to such shares all of the following conditions are satisfied (with clause (E) only being applicable to Series D-1 Preferred Stock):

(A) the Common Stock is listed on the Nasdaq National Market, the American Stock Exchange or the New York Stock Exchange at all times, without interruption, between the date on which the Corporation gives notice under Subsection 1(b)(i) through the date that the certificate representing the shares of Common Stock being issued in payment of such dividend is actually delivered to the applicable holder of Series D Preferred Stock;

(B) as of such delivery date, the Corporation has not received any written notice or warning from such trading or quotation facility with respect to the potential delisting of the Common Stock, which notice or warning continues to be unresolved or otherwise in effect as of such delivery date such that the Common Stock could not be listed and sold within 90 days thereafter by reason of such notice or warning;

(C) the shares of Common Stock issued in payment of such dividend shall be the subject of a registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), which registration statement shall be effective as of the issue date, or all such shares may be sold pursuant to Rule 144(k)

under the Securities Act;

(D) none of the following have occurred on or prior to such the issue date (1) the Corporation or any significant subsidiary of the Corporation, as defined in Rule 1-02(w) of Regulation S-X, (a "Material Subsidiary") commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Material Subsidiary thereof; (2) there is commenced against the Corporation or any Material Subsidiary any such case or proceeding that is not dismissed within 60 days after commencement; (3) the Corporation or any Material Subsidiary is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (4) the Corporation or any Material Subsidiary suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days; (5) the Corporation or any Material Subsidiary makes a general assignment for the benefit of creditors; (6) the Corporation or any Material Subsidiary fails to pay, or states in writing that it is unable to pay or is unable to pay, its debts generally as they become due; or (7) the Corporation or any subsidiary of the Corporation, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action that effects any of the foregoing; and

(E) solely with respect to the holders of Series D-1 Preferred Stock, the receipt of the Common Stock by such holders of Series D-1 Preferred Stock will be exempt from the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended (or any successor thereto) (the "Exchange Act").

(iii) If a dividend on the Series D Preferred Stock is paid in shares of Common Stock, the number of shares of Common Stock to be issued to a holder of Series D Preferred Stock shall equal the quotient of (A) the amount of the dividend payable to such holder divided by (B) the arithmetic average of the Average Daily Prices for twenty consecutive Trading Days commencing on the Trading Day immediately following the applicable Quarterly Deadline. The Corporation shall issue, as of such dividend payment date, a certificate, registered in the name of the holder or its nominee, for the number of shares of Common Stock to which the holder shall be entitled.

(iv) If any dividend on Series D Preferred Stock is paid in shares of Common Stock, the Corporation shall, on or before the twenty-fourth Trading Day following the applicable Quarterly Deadline, (A) issue and deliver to such holder a certificate, registered in the name of such holder, for the number of shares of Common Stock to which such holder shall be entitled or (B) if and when the applicable shares of Common Stock may be held in a balance account with The Depository Trust Corporation through its Deposit Withdrawal Agent Commission System and after such holder has notified the Corporation that this clause (B) shall apply, credit the number of shares of Common Stock to which such holder shall be entitled to such holder's balance account with The Depository Trust Corporation through its Deposit Withdrawal

Agent Commission System.

(v) No fractional shares of Common Stock shall be issued in payment of dividends on the Series D Preferred Stock pursuant to this Section 1(b). In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such

fraction multiplied by the then-effective Series D Conversion Price.

(vi) For purposes hereof, the following definitions shall apply:

(A) "Trading Day" shall mean (I) any day on which the Common Stock is traded on the Nasdaq National Market, (II) if the Common Stock is not then listed on the Nasdaq National Market, any day on which the Common Stock is traded on any other national securities exchange, market, or trading or quotation facility, or (III) if the Common Stock is not then listed or quoted on any national securities exchange, market, or trading or quotation facility, then a day on which trading occurs on the New York Stock Exchange (or any successor thereto); and

(B) "Average Daily Price" shall mean, with respect to a Trading Day, the daily volume weighted average trading price (the total dollar amount traded on that day divided by trading volume for that day) of the Common Stock on that Trading Day and for the regular Trading Day session as reported at 4:15 P.M., Eastern time, by Bloomberg, LP function key HP by using W to calculate the daily weighted average, or such other price as may be determined by an alternative methodology agreed upon from time to time by the Corporation and the holders of a majority of the outstanding shares of Series D-1 Preferred Stock and the holders of a majority of the outstanding shares of Series D-2 Preferred Stock.

(c) PROHIBITION ON OTHER DIVIDENDS. So long as any of the shares of Series D Preferred Stock are outstanding, the Corporation shall not declare, pay or set aside any dividends (other than dividends payable in shares of Common Stock, and then only at such times as the Corporation is in compliance with its obligations hereunder) on shares of Common Stock or Junior Stock unless dividends equal to the full amount of accumulated and unpaid dividends on the Series D Preferred Stock have been declared and have been, or are then being simultaneously, paid. For purposes hereof, "Junior Stock" shall mean the Series A Preferred Stock and any other class or series of equity securities of the Corporation not expressly ranking senior to or on parity with the Series D Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up. "Parity Stock" shall mean any class or series of equity securities of the Corporation expressly on parity with the Series D Preferred Stock, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, whether the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof be different from those of the Series D Preferred Stock, if the holders of such class of stock or series and the Series D Preferred Stock shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accumulated but unpaid dividends per share or liquidation preferences, without preference or priority one over the other. The Series D-1 Preferred Stock shall be Parity Stock with respect to the Series D-2 Preferred Stock, and the Series D-2 Preferred Stock

shall be Parity Stock with respect to the Series D-1 Preferred Stock.

2. LIQUIDATION, DISSOLUTION OR WINDING UP; CERTAIN MERGERS, CONSOLIDATIONS AND ASSET SALES

(a) PAYMENTS TO HOLDERS OF SERIES D PREFERRED STOCK. In the event of any Liquidation (as hereinafter defined), the holders of shares of Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or Junior Stock by reason of

their ownership thereof, an amount per share equal to the greater of (i) the Stated Value, plus any accumulated but unpaid dividends with respect thereto, and (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 4 below immediately prior to such Liquidation (the amount payable pursuant to this sentence is hereinafter referred to as the "Series D Liquidation Amount"). If upon any such Liquidation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series D Preferred Stock and any Parity Stock (as defined below) the full amount to which they shall be entitled, the holders of shares of Series D Preferred Stock and any Parity Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts that would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. A "Liquidation" shall mean any of the following: (A) a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (B) a Deemed Liquidation Event (as defined below).

(b) PAYMENTS TO HOLDERS OF JUNIOR STOCK. After the payment of all preferential amounts required to be paid to the holders of Series D Preferred Stock, any Parity Stock and any other class or series of stock of the Corporation ranking on liquidation senior to the Series D Preferred Stock, upon the dissolution, liquidation or winding up of the Corporation, the holders of shares of Junior Stock then outstanding shall be entitled to receive the remaining assets and funds of the Corporation available for distribution to its stockholders.

(c) DEEMED LIQUIDATION EVENTS

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 2 (a "Deemed Liquidation Event"):

(A) a merger, consolidation, recapitalization, reorganization or other transaction in which:

(I) the Corporation is a constituent party or

(II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger, consolidation, recapitalization, reorganization or other transaction involving the Corporation or a subsidiary in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation, recapitalization, reorganization or other transaction, at least 51%, by voting power and

economic interest, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(B) the sale, in a single transaction or series of related transactions, by the Corporation of all or substantially all the assets of the Corporation (except where such sale is to a wholly owned subsidiary of the Corporation).

(ii) The Corporation shall not effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(A) above unless (A) the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2(a) and 2(b) above or (B) the holders of at least a majority of the then-outstanding shares of Series D-1 Preferred Stock and the then-outstanding shares of Series D-2 Preferred Stock specifically consent in writing to the allocation of such consideration in a manner different from that provided in Subsections 2(a) and 2(b) above.

(iii) In the event of a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(B) above, the Corporation shall use its reasonable best efforts to distribute to each holder of Series D Preferred Stock, in respect of each share of Series D Preferred Stock held by such holder, the Series D Liquidation Amount within ten Trading Days of the consummation of such Deemed Liquidation Event. If such distribution has not occurred, then (A) the Corporation shall deliver a written notice to each of the holders of Series D Preferred Stock no later than fifteen Trading Days after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Series D Preferred Stock, and (B) if the holders of at least a majority of the then-outstanding shares of Series D-1 Preferred Stock or Series D-2 Preferred Stock so request in a written instrument delivered to the Corporation (a "Required Distribution Notice") not later than thirty Trading Days after such Deemed Liquidation Event (which period shall be extended by any period of noncompliance of the Corporation with clause (A) above), the Corporation shall use the consideration received by the Corporation, directly or indirectly, as a result of such Deemed Liquidation Event (net of any liabilities associated with the assets sold or technology licensed, as determined in good faith by the members of the Board of Directors of the Corporation), to the extent legally available therefor (the "Net Proceeds"), to redeem, on a date not later than forty-five Trading Days after such Deemed Liquidation Event (the "Liquidation Redemption Date"), all outstanding shares of Series D-1 Preferred Stock and/or Series D-2 Preferred Stock, as applicable, at a price per share equal to the Series D Liquidation Amount. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Series D-1 Preferred Stock and/or Series D-2 Preferred Stock, as applicable, the Corporation shall redeem a pro rata portion of each holder's shares of Series D-1 Preferred Stock or Series D-2 Preferred Stock, as applicable. In no event shall a holder of Series D Preferred Stock receive more than such holder would receive if all holders of Series D Preferred Stock gave a Required Distribution Notice. The provisions of Section 6 below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series D Preferred Stock

pursuant to this Subsection 2(c)(iii). Prior to the distribution or redemption provided for in this Subsection 2(c)(iii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

(iv) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

(d) The Corporation shall mail written notice of any Liquidation to each holder of Series D Preferred Stock not less than twenty days prior to the payment date or effective date thereof.

3. VOTING

(a) GENERAL VOTING RIGHTS. On any matter (other than, in the case of the Series D-1 Preferred Stock, the election of the directors) presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written action of stockholders in lieu of meeting), each holder of outstanding shares of Series D Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series D Preferred Stock held by such holder are convertible (subject to the limitations of Section 12 below) as of the record date for determining stockholders entitled to vote on such matter; PROVIDED, HOWEVER, in no event shall any share of Series D Preferred Stock be entitled to more votes than the Maximum Per Share Preferred Vote (as defined below). Except as provided by law or by the provisions of Subsection 3(b) or 3(c) below, holders of Series D Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

As used herein, the "Maximum Per Share Preferred Vote" for each share of Series D-1 Preferred Stock shall be the lesser of (i) ____(1) or such greater number of votes as may be specifically permitted under then applicable rules or regulation of the Nasdaq National Market or other applicable market or exchange, and (ii) the number of shares of Common Stock into which each share of Series D-1 Preferred Stock is convertible as of 5:00 P.M. on the record date for the vote.

(b) ELECTIONS OF DIRECTORS. Except as otherwise provided below in this Section 3(b), the holders of the shares of Series D-1 Preferred Stock, exclusively and as a separate class, shall be entitled to elect a number of directors of the Corporation as provided below, and the holders of the shares of Common Stock and of any other class or series of voting stock (but excluding the Series D-1 Preferred Stock), exclusively and as a separate class, shall, subject to the rights of any additional series of Preferred Stock that may be established from time to time, be entitled to elect the balance of the total number of directors of the Corporation. For so long as at least 60,060 shares of Series D-1 Preferred Stock are outstanding, the holders of Series D-1 Preferred Stock shall be entitled to elect a number of directors equal to, rounding to the closest whole number, with .5 being rounded up, (except that rounding shall be down to the closest whole number in the event that rounding up would permit the Series D-1 Preferred Stock to elect fifty percent (50%) or more of the board of directors), the product of (i) the total number of directors to be on the Board of Directors immediately following an election of directors, multiplied by (ii) a fraction, of which (A) the numerator shall be the aggregate Maximum Per Share Preferred Votes for all shares of Series D-1 Preferred Stock outstanding at the time of the vote and (B) the

denominator shall be the sum of (x) the total number of shares of Common Stock outstanding as of the record date for the vote, (y) the aggregate Maximum Per Share Preferred Votes for all shares of Series D-1 Preferred Stock outstanding as of 5:00 P.M. on the record date for the vote, and (z) for each other security of the Corporation, including the Series D-2 Preferred Stock, entitled to vote in an election for directors as of the record date for the vote, the least of (I) the maximum vote permitted under the Certificate of Incorporation, (II) the maximum vote permitted under any Certificate of Designation of this Corporation and (III) the maximum vote permitted under any applicable law, rule or regulation. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of Series D-1 Preferred Stock then outstanding shall constitute a

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(1) Insert number equal to the lesser of the initial Stated Value of a Series D Preferred Share divided by the average of the closing bid prices of the Common Stock for the five days preceding the Closing Date for the Series D Preferred.

quorum of the Series D-1 Preferred Stock for the purpose of electing directors by holders of the Series D-1 Preferred Stock. A vacancy in any directorship filled by the holders of Series D-1 Preferred Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of the Series D-1 Preferred Stock or by any remaining director or directors elected by the holders of Series D-1 Preferred Stock pursuant to this Subsection 3(b).

(c) SERIES VOTING RIGHTS. The Corporation shall not, without the written consent or affirmative vote of the holders of a majority of the shares of (i) Series D-1 Preferred Stock then outstanding, and (ii) with respect to Subsection 3(c)(i) through Subsection 3(c)(v) (inclusive) below, Series D-2 Preferred Stock, in each case given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(i) amend the Certificate of Incorporation, including this Certificate of Designation, so as to amend, alter or repeal the powers, preferences or special rights of the Series D Preferred Stock in a manner that adversely affects the rights, preferences or privileges of the holders of Series D Preferred Stock, PROVIDED that nothing in this Subsection 3(c)(i) shall prohibit the Corporation from effecting a Deemed Liquidation Event so long as the Corporation complies with the provisions of Subsections 2(c)(ii) through (iv) (inclusive) above;

(ii) authorize, designate or issue any Parity Stock or any class of stock of the Corporation ranking senior to the Series D Preferred Stock as to the payment of dividends and as to distribution of assets upon Liquidation ("Senior Stock");

(iii) amend the Certificate of Incorporation to authorize any additional shares of Series D Preferred Stock, Parity Stock or Senior Stock;

(iv) amend, alter or repeal any provision of this Certificate of Designations, PROVIDED that nothing in this Subsection 3(c)(iv) shall prohibit the Corporation from effecting a Deemed Liquidation Event so long as the Corporation complies with the provisions of Subsections 2(c)(ii) through (iv) (inclusive) above;

(v) amend, alter or repeal the Bylaws of the Corporation in

any way that is inconsistent with this Certificate of Designations;

(vi) take any action to decrease the number of directors of the Corporation to less than five;

(vii) apply any of its assets in excess of $7,500,000 in any 12-month period to the redemption, retirement, purchase or acquisition, directly or indirectly (including through a Corporation Subsidiary), of any shares of capital stock of the Corporation (including securities convertible into or exchangeable for such capital stock), other than (A) redemptions of Preferred Stock in accordance with the terms of the Certificate of Incorporation, (B) repurchases of Common Stock from employees and consultants who received the stock in connection with their performance of services at cost upon termination of employment or service, (C) redemptions, retirements, repurchases or acquisitions of 5 1/4% Convertible Subordinated Debentures due June 15, 2005 of the Corporation ("Convertible Debentures"), and (D) repurchases made with the proceeds of an issuance of Junior Stock, except where such proceeds are used to repurchase securities from any officer or director of the Corporation;

(viii) acquire all or substantially all of the assets or stock of any class of any other corporation, or any equity interest in any partnership, limited liability company, joint venture, association, joint stock company or trust where the aggregate consideration paid by the Corporation (as determined in good faith by the directors of the Corporation at the time definitive agreements are entered into) for such acquisition is greater than $80,000,000; or

(ix) incur any indebtedness for borrowed money, which for purposes of this paragraph shall exclude the Convertible Debentures, or permit any Corporation Subsidiary to incur any indebtedness (other than indebtedness of Corporation Subsidiaries owed to the Corporation or other intercompany indebtedness), in excess of, at any time, the greater of (A) $50,000,000; or (B) $65,000,000 less the aggregate principal amount of the then-outstanding Convertible Debentures.

For purposes of this Subsection 3(c), the term "Corporation Subsidiary" shall mean any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which the Corporation (or another Corporation Subsidiary) holds stock or other ownership interests representing (1) more than 50% of the voting power of all outstanding stock or ownership interests of such entity or (2) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity. The rights of the holders of the Series D-1 Preferred Stock under Subsections 3(c)(vi) through (3)(c)(viii) above shall terminate on the first date on which there are fewer than 30,030 outstanding shares of Series D-1 Preferred Stock.

At any meeting held for the purpose of voting on any of the matters for which the holders of the Series D-1 Preferred Stock or Series D-2 Preferred Stock have class voting rights, the presence in person or by proxy of the holders of a majority of the shares of Series D-1 Preferred Stock then outstanding or the Series D-2 Preferred Stock then outstanding, as the case may be, shall constitute a quorum of the Series D-1 Preferred Stock or Series D-2 Preferred Stock for the purpose of voting on matters to which these class voting rights apply.

4. OPTIONAL CONVERSION

The holders of the Series D Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) RIGHT TO CONVERT. Each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value of such shares by the Series D Conversion Price (as defined below) in effect on the Conversion Date (as defined below). The "Series D Conversion Price" initially shall be $9.99(2). Such initial Series D Conversion Price, and the rate at which shares of Series D Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. In the event of a notice of redemption of any shares of Series D Preferred Stock pursuant to Section 6 below, the Conversion Rights of the shares of Series D Preferred Stock designated for redemption shall terminate at 5:00 p.m., Eastern time, on the last full day preceding the applicable Redemption Date (as defined below), unless the Redemption Price (as defined below) is not paid or tendered for payment on the Redemption Date, in which case the Conversion Rights for such shares shall continue until such price is paid, or tendered for payment, in full. In the event of a liquidation, dissolution or winding up of the Corporation, (i) the Conversion Rights shall terminate at 5:00 p.m., Eastern time, on the last full day

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(2) Assuming stockholder approval of the one for three reverse stock split approved by the Board of Directors on June 1, 2003.

preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series D Preferred Stock (unless such amounts are not paid or tendered for payment on the Redemption Date, in which case the Conversion Rights for such shares shall continue until such amounts are paid, or tendered for payment, in full) and (ii) the Corporation shall provide to each holder of shares of Series D Preferred Stock notice of such liquidation, dissolution or winding up, which notice shall (A) be sent at least 20 days (unless a greater period is required by law) prior to the termination of the Conversion Rights and (B) state the amount per share of Series D Preferred Stock that will be paid or distributed on such liquidation, dissolution or winding up and in reasonable detail the manner of calculation thereof. For the purposes of this Subsection 4(a), "Redemption Date" shall mean any Mandatory Redemption Date (as defined below) or Optional Redemption Date (as defined below) and "Redemption Price" shall mean, as applicable, the Mandatory Redemption Price (as defined below) or the Optional Redemption Price (as defined below).

(b) PAYMENT IN LIEU OF ACCUMULATED DIVIDENDS. Upon conversion of a share of Series D Preferred Stock in accordance with this Section 4, as part of the conversion, the Corporation shall pay to the holder thereof an amount equal to the total accumulated but unpaid dividends on such share. The Corporation shall pay such amount in cash or if the conditions set forth in Section 1(b)(ii) above are satisfied, in Common Stock, in its sole discretion. If the Corporation elects to pay such amount in shares of Common Stock, the number of shares of Common Stock to be issued shall equal the quotient of (i) such amount divided by (ii) the arithmetic average of the Average Daily Prices for five consecutive Trading Days, the last day of which shall be the second Trading Day preceding the date on which the amount is paid. To the extent the Corporation elects to pay such

accumulated but unpaid dividends in shares of Common Stock, (i) the Corporation shall immediately notify such holder within two Trading Days of the Conversion Date in accordance with the notice provisions of Section 13 below and (ii) such election may not be revoked or otherwise changed by the Corporation. In the event the Corporation fails to deliver a notice that it intends to pay dividends in Common Stock within two Trading Days as required above, the Corporation shall pay such dividend in cash. All accrued but unpaid dividends paid by the Corporation in Common Stock pursuant to this Subsection 4(b) shall be paid by the Corporation on the tenth Trading Day following the applicable Conversion Date. All accumulated but unpaid dividends paid by the Corporation in cash pursuant to this Subsection 4(b) shall be paid by the Corporation on the fourth Trading Day following the applicable Conversion Date.

(c) FRACTIONAL SHARES. No fractional shares of Common Stock shall be issued upon conversion of the Series D Preferred Stock pursuant to this Section 4. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then-effective Series D Conversion Price. The Corporation shall, as soon as practicable after the Conversion Date, and in no event later than three Trading Days after the Conversion Date, pay to such holder any cash payable in lieu of any such fraction of a share.

(d) MECHANICS OF CONVERSION

(i) In order for a holder of Series D Preferred Stock to convert shares of Series D Preferred Stock into shares of Common Stock, such holder shall deliver to the office of the transfer agent for the Series D Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) a written notice (the "Conversion Notice") that such holder elects to convert all or any number of the shares of the Series D Preferred Stock represented by such certificate or certificates. The Conversion Notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation,

certificates surrendered for conversion shall be accompanied by a written instrument evidencing such holder's desire to convert a specified number of shares of Series D Preferred Stock, duly executed by the registered holder or such holder's attorney duly authorized in writing. The date specified by the holder in the notice shall be the conversion date or, if no date is specified in the Conversion Notice, the conversion date shall be the date the Conversion Notice is delivered to the Corporation (as determined in accordance with the notice provisions hereof; such date, the "Conversion Date"). The shares of Common Stock issuable upon conversion of the shares represented by the certificate or certificates delivered to the Corporation shall be deemed to be outstanding as of the Conversion Date. On or before the Conversion Date, the holders shall surrender a certificate or certificates for the shares to be converted (or an affidavit of loss and indemnity agreement relating thereto) to the office of the transfer agent for the Series D Preferred (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Upon surrender of a certificate following one or more partial conversions, the Corporation shall promptly deliver to such holder a new certificate representing the remaining shares of Series D Preferred Stock. Upon conversion of any Series D Preferred Stock, the Corporation shall promptly (but in no event later than three Trading Days after the Conversion Date) issue or cause to be issued and cause to be delivered to, or upon the written order of, such holder (or former holder, as the case may be) of Series D Preferred Stock and in such name or names as such holder may designate, a certificate for the shares of Common Stock issuable upon such conversion, free of restrictive legends unless such shares of

Common Stock are not then freely transferable without volume restrictions pursuant to Rule 144(k) under the Securities Act. Such holder, or any person so designated by such holder to receive such shares of Common Stock, shall be deemed to have become holder of record of such shares of Common Stock as of the Conversion Date. If and when such shares of Common Stock may be freely transferred pursuant to Rule 144 under the Securities Act or pursuant to an effective registration statement, the Corporation shall use its best efforts to deliver such shares of Common Stock electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions, and shall issue such shares of Common Stock in the same manner as dividend payment shares are issued pursuant to Section 1(b)(iii) above.

(ii) The Corporation covenants that it shall at all times when the Series D Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series D Preferred Stock, such number of its duly authorized but unissued and otherwise unreserved shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series D Preferred Stock or, if the number of shares of Common Stock so reserved is insufficient, the Corporation shall take any corporation action that is necessary to make available a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock within 90 days after the occurrence of such deficiency. Before taking any action that would cause an adjustment reducing the Series D Conversion Price below the then par value of the Common Stock, the Corporation shall take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series D Conversion Price.

(iii) Upon any such conversion, shares of Common Stock issued upon conversion of such shares of Series D Preferred Stock shall not be deemed Additional Shares of Common Stock (as defined below) and no adjustment to the Series D Conversion Price shall be made for any accumulated but unpaid dividends on the Series D Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Series D Preferred Stock that shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except for the right of the holders thereof to receive shares of Common Stock and cash, if any, in accordance with Subsections 4(b) and 4(c) above. Any shares of Series D Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation (without the need for action by the holders of Series D Preferred Stock or any other stockholders) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series D Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series D Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series D Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount

of any such tax or has established, to the reasonable satisfaction of the Corporation, that such tax has been paid.

(e) ADJUSTMENTS TO SERIES D CONVERSION PRICE FOR DILUTING ISSUES

(i) SPECIAL DEFINITIONS. For purposes of this Section 4, the following definitions shall apply:

(A) "Option" shall mean any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Series D Original Issue Date" shall mean the date on which a share of Series D Preferred Stock was first issued, regardless of the number of times the transfer of such share shall be made on the Corporation's stock transfer records and regardless of the number of certificates that may be issued to evidence such share.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(e)(iii) below, deemed to be issued) by the Corporation after the Series D Original Issue Date, other than shares of Common Stock issued, issuable or deemed issued:

(I) as a dividend or distribution on Series D Preferred Stock;

(II) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(f) or 4(g) below;

(III) to employees or directors of, or consultants to, the Corporation or any of

its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation and by a majority of the directors of the Corporation who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or other market or exchange on which the Common Stock is then traded or authorized for quotation);

(IV) to Accenture LLP pursuant to agreements in effect on June 1, 2003; or

(V) in connection with any transaction with any strategic investor, vendor or customer, lessor, customer, supplier, marketing partner, developer or integrator or any similar arrangement, in each case the primary purpose of which is not to raise equity capital, provided such issuance is approved by the Board of Directors of the Corporation and by a

majority of the directors of the Corporation who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or other market or exchange on which the Common Stock is then traded or authorized for quotation).

(ii) NO ADJUSTMENT OF SERIES D CONVERSION PRICE. No adjustment in the Series D Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if the consideration per share (determined pursuant to Subsection 4(e)(v) below) for such Additional Share of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series D Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock. In addition, no adjustment in the Series D Conversion Price shall be made (A) with respect to the Series D-1 Preferred Stock, if prior to such issuance or deemed issuance of Additional Shares of Common Stock, the Corporation receives written notice from the holders of at least a majority of the shares of Series D-1 Preferred Stock then outstanding agreeing that no such adjustment shall be made as a result of such issuance or deemed issuance and (B) with respect to the Series D-2 Preferred Stock, if prior to such issuance or deemed issuance of Additional Shares of Common Stock, the Corporation receives written notice from the holders of at least a majority of the shares of Series D-2 then outstanding agreeing that no such adjustment shall be made as a result of such issuance or deemed issuance.

(iii) ISSUE OF SECURITIES TO BE A DEEMED ISSUE OF ADDITIONAL SHARES OF COMMON STOCK

(A) If the Corporation at any time or from time to time after the Series D Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities that, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock that are specifically excepted from the definition of Additional Shares of Common Stock by Subsection 4(e)(i)(D) above) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of

such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series D Conversion Price pursuant to the terms of Subsection 4(e)(iv) below, are revised (either automatically pursuant the provisions contained therein or as a result of an amendment to such terms)

to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series D Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted prospectively to such Series D Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Series D Conversion Price to an amount that exceeds the lower of (i) the Series D Conversion Price on the original adjustment date, or (ii) the Series D Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities that, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock that are specifically excepted from the definition of Additional Shares of Common Stock by Subsection 4(e)(i)(D) above), the issuance of which did not result in an adjustment to the Series D Conversion Price pursuant to the terms of Subsection 4(e)(iv) below (either because the consideration per share (determined pursuant to Subsection 4(e)(v) below) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series D Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series D Original Issue Date), are revised after the Series D Original Issue Date (either automatically pursuant the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4(e)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security that resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series D Conversion Price pursuant to the terms of Subsection 4(e)(iv) below, the

Series D Conversion Price shall be readjusted prospectively to such Series D Conversion Price as

would have obtained had such Option or Convertible Security never been issued.

(E) No adjustment in the Series D Conversion Price shall be made upon the issue of shares of Common Stock or Convertible Securities upon the exercise of Options or the issue of shares of Common Stock upon the conversion or exchange of Convertible Securities.

(iv) ADJUSTMENT OF SERIES D CONVERSION PRICE UPON ISSUANCE OF ADDITIONAL SHARES OF COMMON STOCK. In the event the Corporation shall at any time after the Series D Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(e)(iii) above), without consideration or for a consideration per share less than the applicable Series D Conversion Price in effect immediately prior to such issue, then the Series D Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series D Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock that the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series D Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, (i) for the purpose of this Subsection 4(e)(iv), all shares of Common Stock issuable upon conversion or exercise of shares of Series D Preferred Stock, Options or Convertible Securities outstanding immediately prior to such issue or upon exercise of such securities shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon conversion of such outstanding shares of Series D Preferred Stock shall be determined without giving effect to any adjustments to the Series D Conversion Price resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) DETERMINATION OF CONSIDERATION. For purposes of this Subsection 4(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) CASH AND PROPERTY. Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the non-management members of the Board of Directors of the Corporation; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by non-management members of the Board of

Directors of the Corporation.

(B) OPTIONS AND CONVERTIBLE SECURITIES. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(e)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) MULTIPLE CLOSING DATES. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are comprised of shares of the same series or class of Preferred Stock and that would result in an adjustment to the Series D Conversion Price pursuant to the terms of Subsection 4(e)(iv) above, and such issuance dates occur within a period of no more than 60 days, then, upon the final such issuance, the Series D Conversion Price shall be readjusted prospectively to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(f) ADJUSTMENT FOR STOCK SPLITS AND COMBINATIONS. If the Corporation shall at any time or from time to time after the Series D Original Issue Date (i) effect a subdivision of the outstanding Common Stock (whether by stock split, stock dividend or otherwise) without a corresponding subdivision of the Series D Preferred Stock, or (ii) combine the outstanding shares of Series D Preferred Stock (whether by reverse stock split or otherwise) without a corresponding combination of the Common Stock, the Series D Conversion Price in effect immediately before that subdivision or combination shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Series D Original Issue Date (x) combine the outstanding shares of Common Stock (whether by reverse stock split or otherwise) without a corresponding combination of the Series D Preferred Stock, or (y) effect a subdivision of the outstanding shares of Series D Preferred Stock (whether by stock split, stock dividend or otherwise) without a corresponding subdivision of the Common Stock, the Series D Conversion Price in effect immediately before the combination or subdivision shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) ADJUSTMENT FOR CERTAIN DIVIDENDS AND DISTRIBUTIONS. In the event the Corporation at any time, or from time to time after the Series D

Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other

distribution payable in additional shares of Common Stock, then and in each such event the Series D Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series D Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

PROVIDED, HOWEVER, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series D Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series D Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Series D Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series D Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series D Preferred Stock that are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(h) ADJUSTMENTS FOR OTHER DIVIDENDS AND DISTRIBUTIONS. In the event the Corporation at any time or from time to time after the Series D Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property, then and in each such event provision shall be made so that the holders of the Series D Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the kind and amount of securities of the Corporation, cash or other property that they would have been entitled to receive had the Series D Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Series D Preferred Stock; provided, however, that no such provision shall be made if the holders of Series D Preferred Stock receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as they would have received if all outstanding shares of Series D Preferred Stock had been converted into Common Stock on the date of such event.

(i) ADJUSTMENT FOR MERGER OR REORGANIZATION, ETC. Subject to the provisions of Subsection 2(c) above, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation (which is not a Liquidation) in which the Common Stock (but not the Series D Preferred Stock) is converted into or exchanged for securities,

cash or other property (other than a transaction covered by paragraph (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series D Preferred Stock shall be convertible into the kind and amount of securities, cash or other property that a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series D Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series D Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series D Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series D Preferred Stock.

(j) ROUNDING OF CALCULATIONS; MINIMUM ADJUSTMENTS. All calculations under this Section 4 shall be made to the nearest one tenth of a cent. No adjustment in the Series D Conversion Price is required if the amount of such adjustment would be less than $0.01; provided, however, that any adjustments which by reason of this Subsection 4(j) are not required to be made will be carried forward and given effect in any subsequent adjustment. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(k) CERTIFICATE AS TO ADJUSTMENTS. Upon the occurrence of each adjustment pursuant to this Section 4, the Corporation at its expense will promptly compute such adjustment in accordance with the terms hereof and prepare a certificate describing in reasonable detail such adjustment and the transactions giving rise thereto, including all facts upon which such adjustment is based. Upon written request, the Corporation will promptly deliver a copy of each such certificate to each holder of Series D Preferred Stock and to the Corporation's Transfer Agent. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series D Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series D Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property that then would be received upon the conversion of Series D Preferred Stock.

(l) NOTICE OF RECORD DATE. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series D Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the

Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series D Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series D Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Any notice required under this Subsection 4(l) shall be sent at least 20 days prior to the record date or effective date for the event specified in such notice.

5. REDEMPTION AT THE OPTION OF THE CORPORATION

(a) MANDATORY REDEMPTION EVENT. All or any portion of the outstanding shares of Series D Preferred Stock shall be redeemed at a price per share equal to (i) 125% of Stated Value plus (ii) all accumulated but unpaid dividends (the "Mandatory Redemption Price") in accordance with this Section 5 pursuant to written notice (the "Mandatory Redemption Notice") delivered to the holders of Series D Preferred Stock by the Corporation, in its sole discretion, at any time or from time to time after the third anniversary of the Series D Original Issue Date; provided that the Corporation shall be entitled to deliver a Mandatory Redemption Notice only if the Average Daily Price on each Trading Day for a period of at least 45 consecutive Trading Days (such period ending no earlier than four Trading Days prior to the date of such Mandatory Redemption Notice) has exceeded $22.80(3) (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination, split-up, recapitalization and like occurrences on or after the Series D Original Issue Date affecting such shares). Any Mandatory Redemption Notice delivered pursuant to this Subsection 5(a) shall specify a date (a "Mandatory Redemption Date") as of which such redemption shall be effected. Each Mandatory Redemption Date shall be a Trading Day not less than 20 Trading Days nor more than 30 Trading Days following the date on which the related Mandatory Redemption Notice is sent by the Corporation. On each Mandatory Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series D Preferred Stock owned by each holder, that number of outstanding shares of Series D Preferred Stock specified in the related Mandatory Redemption Notice.

(b) MANDATORY REDEMPTION NOTICE. Any Mandatory Redemption Notice shall be delivered to each holder of record of Series D Preferred Stock, as applicable, in accordance with the notice provisions set forth in Section 13 below. Each Mandatory Redemption Notice shall state:

(i) the Mandatory Redemption Date;

(ii) the Mandatory Redemption Price;

(iii) the number of shares of Series D Preferred Stock held by the holder that the Corporation shall redeem on the Mandatory Redemption Date;

(iv) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4 above); and

(v) that the holder is to surrender to the Corporation, in the manner and at the place

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(3) Assuming stockholder approval of the one for three reverse stock split approved by the Board of Directors on June 1, 2003.

designated, its certificate or certificates (or an affidavit of loss and indemnity agreement for such certificates) representing the shares of Series D Preferred Stock to be redeemed.

(c) SURRENDER OF CERTIFICATES; PAYMENT. On or before the applicable Mandatory Redemption Date, each holder of shares of Series D Preferred Stock to be redeemed on such Mandatory Redemption Date, unless such holder has exercised its right to convert such shares as provided in Section 4 above, shall surrender the certificate or certificates (or deliver an affidavit of loss and indemnity agreement for such certificates) representing such shares to the Corporation, in the manner and at the place designated in the Mandatory Redemption Notice, and thereupon the Mandatory Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Series D Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series D Preferred Stock shall promptly be issued to such holder.

(d) RIGHTS SUBSEQUENT TO MANDATORY REDEMPTION. If the Mandatory Redemption Notice shall have been duly given, and if on the applicable Mandatory Redemption Date the Mandatory Redemption Price payable upon redemption of the shares of Series D Preferred Stock to be redeemed on such Mandatory Redemption Date is paid or tendered for payment, then notwithstanding that the certificates evidencing any of the shares of Series D Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accumulate after such Mandatory Redemption Date and all rights with respect to such shares shall forthwith after the Mandatory Redemption Date terminate, except only the right of the holders to receive the Mandatory Redemption Price without interest upon surrender of their certificate or certificates therefor.

(e) REDEEMED OR OTHERWISE ACQUIRED SHARES. Any shares of Series D Preferred Stock that are redeemed pursuant to this Section 5 or Section 6 below or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and shall not be reissued, sold or transferred as shares of Series D Preferred Stock. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series D Preferred Stock following any redemption.

(f) OTHER REDEMPTIONS OR ACQUISITIONS. Neither the Corporation nor any subsidiary shall redeem or otherwise acquire any series of Series D Preferred Stock, except (i) as expressly authorized herein, (ii) with the written consent of the holders of at least a majority of the then-outstanding shares of (A) Series D-1 Preferred Stock and (B) Series D-2 Preferred Stock, or (iii) pursuant to a purchase offer made pro rata to all holders of Series D Preferred Stock on the basis of the number of shares of Series D Preferred Stock owned by each such holder.

6. REDEMPTION AT THE OPTION OF THE HOLDERS OF SERIES D PREFERRED STOCK

(a) RIGHT TO REDEEM. Shares of Series D-1 Preferred Stock shall be redeemed by the Corporation at a price per share equal to the Stated Value plus accumulated but unpaid dividends (the "Optional Redemption Price") at any time and from time to time no earlier than the sixth anniversary of the Series D Original Issue Date after receipt by the Corporation from the holders of at least a majority of the then-outstanding shares of Series D-1 Preferred Stock of written notice (a "Series D-1 Optional Redemption Notice") requesting redemption of all or any portion of the outstanding shares of Series D-1 Preferred Stock. Shares of Series D-2 Preferred Stock shall be redeemed by the Corporation at a price per share equal to the Optional Redemption Price at any time

and from time to time no earlier than the sixth anniversary of the Series D Original Issue Date after receipt by the Corporation from holder(s) holding in the aggregate shares of Series D-2 Preferred Stock then outstanding with a Stated Value in excess of $3,000,000 (or if less than $3,000,000, all of such holder's shares of Series D-2 Preferred Stock) of written notice (a "Series D-2 Optional Redemption Notice" and together with a Series D-1 Optional Redemption Notice, an "Optional Redemption Notice") requesting redemption of all or any portion of such holder's outstanding shares of Series D-2 Preferred Stock. Notwithstanding any other provision of this Section 6, until the seventh anniversary of the Series D Original Issue Date, the aggregate number of shares of (i) Series D-1 Preferred Stock or (ii) Series D-2 Preferred Stock that the Corporation may be required to redeem under this Section 6 shall not exceed 50% of the number of shares of Series D-1 Preferred Stock or Series D-2 Preferred Stock, respectively, outstanding as of the sixth anniversary of the Series D Original Issue Date. The process for effecting any such redemption shall be as follows:

(i) Within 15 days after the receipt of an Optional Redemption Notice, the Corporation shall send to each holder of Series D Preferred Stock a notice (the "Corporation Notice") which shall (A) state the number of shares of Series D Preferred Stock that are the subject of the applicable Optional Redemption Notice, and (B) specify a date (an "Optional Redemption Date") as of which a redemption pursuant to this Section 6 shall be effected and the date by which a holder may elect to join in the redemption pursuant to subsection (b)(ii) below. Each Optional Redemption Date shall be a Trading Day not less than 40 days or more than 120 days following the date on which the related Corporation Notice is sent by the Corporation.

(ii) Within 20 days after receipt of the Corporation Notice, each holder of Series D Preferred Stock may provide notice to the Corporation that such holder wishes to include all or a portion of its shares of Series D Preferred Stock in such Optional Redemption Notice and stating the number of shares to be so included (and, thereafter such shares shall be deemed to be included in such Optional Redemption Notice).

(iii) Within 50 days after receiving the Optional Redemption Notice and at least 10 days prior to the Optional Redemption Date, the Corporation shall provide each holder of Series D Preferred Shares with written notice ("Closing Notice") that states (i) the applicable

Optional Redemption Price, (ii) the applicable Optional Redemption Date, (iii) the number of shares requested to be redeemed on that Optional Redemption Date, (iv) the number of shares of Series D Preferred Stock to be redeemed on such date, and (v) that the holder is to surrender to the Corporation, in the manner and at the place designated, its certificate or certificates (or affidavit of loss and indemnity agreement) representing the shares of Series D Preferred Stock to be redeemed.

(iv) Subject to the limitations above in this Section 6, on the applicable Optional Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series D Preferred Stock owned by each holder for which redemption was requested, that number of outstanding shares of Series D Preferred Stock specified or deemed to be included in the Optional Redemption Notice. In the event the Corporation does not have sufficient funds legally available to redeem on such Optional Redemption Date all shares of Series D Preferred Stock to be redeemed on such Optional Redemption Date, the Corporation shall redeem a pro rata portion of each holder's shares out of funds legally available therefor, based on the respective amounts that would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. If the Corporation has not redeemed all

outstanding shares of Series D Preferred Stock which are to be redeemed within 120 days following the date on which the related Optional Redemption Notice is sent by the Corporation, the Dividend Rate with regard to any shares of Series D Preferred Stock that remain outstanding shall be 14% per annum from the date of the Optional Redemption Notice until such date as such shares are actually redeemed.

(b) OPTIONAL REDEMPTION NOTICE AND OTHER NOTICES. Any Optional Redemption Notice shall be delivered to the Corporation, and any Corporation Notice or Closing Notice shall be delivered to each holder of record of Series D Preferred Stock, as applicable, in accordance with the notice provisions set forth in Section 13 below.

(c) SURRENDER OF CERTIFICATES; PAYMENT. On or before the applicable Optional Redemption Date, each holder of shares of Series D Preferred Stock to be redeemed on such Optional Redemption Date, unless such holder has exercised its right to convert such shares as provided in Section 4 above, shall surrender the certificate or certificates (or deliver an affidavit of loss and indemnity agreement for such certificates) representing such shares to the Corporation, in the manner and at the place designated by the Corporation in its notice pursuant to this Section 6, and thereupon the Optional Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Series D Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series D Preferred Stock shall promptly be issued to such holder.

(d) RIGHTS SUBSEQUENT TO OPTIONAL REDEMPTION. If the Optional Redemption Notice shall have been duly given, and if on the applicable Optional Redemption Date the Optional Redemption Price payable upon redemption of the shares of Series D Preferred Stock to be redeemed on such Optional Redemption Date is paid or tendered for payment, then notwithstanding that the certificates evidencing any of the shares of Series D Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock

shall cease to accumulate after such Optional Redemption Date and all rights with respect to such shares shall forthwith after the Optional Redemption Date terminate, except only the right of the holders to receive the Optional Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. WAIVERS

The holders of Series D Preferred Stock shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the Delaware General Corporation Law. Any of the rights of the holders of Series D-1 Preferred Stock or Series D-2 Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of the then outstanding shares of Series D-1 Preferred Stock or Series D-2 Preferred Stock, respectively, subject to applicable law.

8. NO IMPAIRMENT

The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation without the written consent of the holders of at least a majority of the then-outstanding shares of Series D Preferred Stock, but will at all times in good faith assist in the carrying out of all the provisions of this Certificate of Designations and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series D

Preferred Stock against impairment.

9. REGISTRATION OF SERIES D PREFERRED STOCK

The Corporation shall register shares of the Series D Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "Series D Preferred Stock Register"), in the name of the record holders thereof from time to time. The Corporation may deem and treat the registered holder of shares of Series D Preferred Stock as the absolute owner thereof for the purpose of any conversion hereof or any distribution to such holder, and for all other purposes, absent actual notice to the contrary.

10. REGISTRATION OF TRANSFERS

The Corporation shall register the transfer of any shares of Series D Preferred Stock in the Series D Preferred Stock Register, upon surrender of certificates evidencing such Shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series D Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring holder.

11. REPLACEMENT CERTIFICATES

If any certificate evidencing Series D Preferred Stock, or Common Stock issued upon conversion thereof, is mutilated, lost, stolen or destroyed, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of an affidavit of loss and indemnity agreement reasonably satisfactory to the Corporation evidencing such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

12. LIMITATION ON CONVERSION

(a) Notwithstanding anything to the contrary contained herein, the number of shares of Common Stock that may be acquired by any holder of Series D-2 Preferred Stock upon any conversion of Series D-2 Preferred Stock (or otherwise in respect of the Series D-2 Preferred Stock) shall be limited to the extent necessary to insure that, following such conversion (or other issuance), the total number of shares of Common Stock then beneficially owned by such holder and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act, does not exceed 4.999% (the "Maximum Percentage") of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such conversion). Each delivery of a Conversion Notice by a holder of Series D-2 Preferred Stock will constitute a representation by such holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of shares of Common Stock requested in such Conversion Notice is permitted under this paragraph. By written notice to the Corporation, any holder of Series D-2 Preferred Stock may waive the provisions of this Section or increase or decrease the Maximum Percentage to any other percentage specified in such notice, but (i) any such waiver or increase will not be effective until the 61st day after such notice is delivered to the Corporation, and (ii) any such waiver or increase or decrease will apply only to such holder and not to any other holder of Series D-2 Preferred Stock. For purposes of this Section 12, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(b) For purposes of this Section 12, in determining the number of outstanding shares of Common Stock, a holder of Series D Preferred Stock may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation's most recent Form 10-Q, Form 10-K or other public filing with the Commission, as the case may be, (2) a more recent public announcement by the Corporation, or (3) any other notice by the Corporation or its transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written request of any holder of Series D Preferred Stock, the Corporation shall promptly, but in no even later than one Trading Day following the receipt of such notice, confirm in writing to any such holder the number of shares of Common Stock then outstanding.

13. NOTICES

Any and all notices or other communications or deliveries hereunder (including without limitation any Conversion Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 5:30 p.m. (New York City time) on a Trading Day and electronic confirmation of receipt is received by the sender, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Corporation, to 10 Canal Park, Cambridge, Massachusetts 02141, facsimile: (617) 949-1722, attention: Chief Executive Officer and General Counsel, or (ii) if to a holder of Series D Preferred Stock, to the address or facsimile number appearing on the Corporation's stockholder records or such other address or facsimile number as such holder may provide to the Corporation in accordance with this Section.

14. PREEMPTIVE RIGHTS

Each holder of the Series D Preferred Stock shall have preemptive rights,

the terms of which are specified in the Investor Rights Agreement among the Corporation and the holders of Series D Preferred Stock dated _____, 2003 (as amended from time to time in accordance with its terms, and subject to the limitations and other terms set forth in such Investor Rights Agreement, including the right to waive any term thereof).

* * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed by its President as of _____, 2003.

ASPEN TECHNOLOGY, INC.

By:

President and Chief Executive Officer

Exhibit 99.1

SECURITIES PURCHASE AGREEMENT

by and among

ASPEN TECHNOLOGY, INC.

and

THE SEVERAL PURCHASERS NAMED ON SCHEDULE 2.01

Dated June 1, 2003

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ANNEXES

SCHEDULES

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (the "AGREEMENT") dated June 1, 2003 among ASPEN TECHNOLOGY, INC., a Delaware corporation (the "COMPANY"), the several purchasers named as "Series D-1 Purchasers" in SCHEDULE 2.01 (individually, a "SERIES D-1 PURCHASER" and, collectively, the "SERIES D-1 PURCHASERS"), and the several purchasers named as "Series D-2 Purchasers" in SCHEDULE 2.01 (individually, a "SERIES D-2 PURCHASER" and, collectively, the "SERIES D-2 PURCHASERS" and, with the Series D-1 Purchasers, the "PURCHASERS").

BACKGROUND

A. The Company proposes to issue, pursuant to this Agreement, (i) 300,300 shares (the "SERIES D-1 SHARES") of its Series D-1 Convertible Preferred Stock, par value $0.10 per share and stated value of $333.00 per share (the "SERIES D-1 PREFERRED STOCK"), and 63,064 shares (the "SERIES D-2 SHARES" and, with the Series D-1 Shares, the "SHARES") of its Series D-2 Convertible Preferred Stock, par value $0.10 per share and stated value of $333.00 per share (the "SERIES D-2

PREFERRED STOCK" and, with the Series D-1 Preferred Stock, the "SERIES D PREFERRED STOCK"), which Series D-1 Shares and Series D-2 Shares shall have the respective rights, privileges and preferences set forth on EXHIBIT A, and (ii) warrants to acquire an aggregate of 7,267,266 shares of Common Stock, par value $.10 per share, of the Company (the "COMMON STOCK") at an exercise price of $3.33 per share, each in the form as EXHIBIT B (the "WARRANTS" and, with the Shares, the "SECURITIES").

B. Each Series D-1 Purchaser, severally and not jointly, desires to acquire Series D-1 Shares and Warrants from the Company, and the Company desires to issue such Series D-1 Shares and Warrants to the Series D-1 Purchasers, in each case on the terms and subject to the conditions set forth herein. In addition, each Series D-2 Purchaser, severally and not jointly, desires to acquire Series D-2 Shares and Warrants from the Company, and the Company desires to issue such Series D-2 Shares and Warrants to the Series D-2 Purchasers, in each case on the terms and subject to the conditions set forth herein.

C. To induce the Purchasers to enter into this Agreement and to consummate the transactions contemplated hereby, each of the stockholders of the Company listed on ANNEX I, contemporaneously with the execution of this Agreement, has executed and delivered a voting agreement in the form as EXHIBIT C and the related irrevocable proxy (collectively, the "VOTING AGREEMENTS").

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 DEFINITIONS.

(a) The following terms, as used herein, have the following meanings:

"ACCENTURE" means Accenture LLP.

"ACCENTURE AGREEMENTS" means each of the following agreements, as amended, entered into between the Company and Accenture as of February 8, 2002: (a) Amended and Restated Marketing Alliance Agreement; (b) License Agreement; (c) Development Agreement; (d) Stock Issuance Agreement for License Fees; and (e) Stock Issuance Agreement for Development.

"ADVENT" means Advent International Corporation, a Delaware corporation.

"AFFILIATE" of a Person shall mean any Person which, directly or indirectly, controls, is controlled by, or is under common control with such Person. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to elect a majority of the board of directors (or other governing body) or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise and, in any event and without limiting the generality of the foregoing, any Person owning more than ten percent (10%) of the voting securities of another Person shall be deemed to control that Person. With respect to each of the Series D-1 Purchasers, the term "Affiliate" shall also include (i) any entity in which such Series D-1 Purchaser (or one of its Affiliates) is a general partner or member, (ii) each investor in such Series D-1 Purchaser, but only in connection with the liquidation, winding up or dissolution of the Series D-1 Purchaser, and only to the extent of such investor's pro rata share in the Series D-1 Purchaser and (iii) any investment fund managed by Advent.

"ALTERNATIVE TRANSACTION" means any (a) tender or exchange offer involving the Company; (b) merger, consolidation or other business combination involving the Company or any of the Significant Subsidiaries, other than a merger, consolidation or other business combination solely between the Company and one or more of the Significant Subsidiaries; (c) acquisition by any Person (other than the Company or one or more of its Significant Subsidiaries) of any interest in equity securities (either currently outstanding or newly issued) of the Company or any of the Significant Subsidiaries whereby after the consummation of such acquisition such acquiring Person would be the beneficial owner of fifteen percent (15%) or more of the outstanding equity securities of the Company or any of the Significant Subsidiaries; (d) acquisition of all or any material portion of the business or assets of the Company or any of the Significant Subsidiaries; (e) recapitalization or restructuring with respect to the Company; and (f) any other transaction similar to any of the foregoing with respect to the Company or any

of the Significant Subsidiaries, other than pursuant to the transactions to be effected pursuant to this Agreement and the other Transaction Documents.

"BALANCE SHEET DATE" means (i) December 31, 2002 for all provisions of this Agreement relating to the Series D-1 Purchasers and (ii) March 31, 2003 for all provisions of this Agreement relating to the Series D-2 Purchasers.

"BOARD" means the Board of Directors of the Company.

"BUSINESS DAY" means any day except a Saturday, Sunday or other day on which commercial banks in the City of New York are authorized by law to close.

"CERTIFICATE OF DESIGNATIONS" means the Certificate of Designations of Series D-1 Convertible Preferred Stock and Series D-2 Convertible Preferred Stock, substantially in the form of EXHIBIT A.

"CHARTER AMENDMENT" means the Certificate of Amendment of the Certificate of Incorporation of the Company, substantially in the form of EXHIBIT D.

"CODE" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder or in connection therewith.

"COMMISSION" means the Securities and Exchange Commission.

"COMPANY'S KNOWLEDGE" and "KNOWLEDGE OF THE COMPANY" means the actual knowledge of the following Persons: David McQuillin, Stephen J. Doyle, Lisa W. Zappala, Scott Pitt and Wayne Sim and in addition, solely for purposes of Section 3.12, Steve Williams, Steven Pringle, Lawrence Evans, Manolis Kotzabasakis and Willie Chan.

"CONVERTIBLE DEBENTURES" means the Company's issued and outstanding 5 1/4% Convertible Subordinated Debentures due June 15, 2005.

"COPYRIGHTS" means all copyrights, copyrightable works and mask works, including, without limitation, any Software or databases, and any other works of authorship, whether statutory or common law, registered or unregistered, and registrations for and pending applications to register the same, all reissues, extensions and renewals of any of the items described in this definition, now or hereafter in force and all licenses to any of the foregoing, in any country or other geographic area in the world.

"EMPLOYEE BENEFIT PLAN" means any pension, retirement, profit-sharing, deferred compensation, bonus, incentive, performance, stock option, phantom stock, stock purchase, restricted stock, premium conversion, medical, hospitalization, vision, dental or other health, life, disability, severance (other than non-U.S. statutory severance obligations), termination or other

employee benefit plan, program, arrangement, agreement or policy, whether written or unwritten and whether or not subject to ERISA, to which the Company or any Subsidiary contributes, is obligated to contribute to, is a party to or is otherwise bound, or with respect to which the Company or any Subsidiary may have any liability.

"ENVIRONMENTAL LAWS" means any applicable federal, state, local or foreign law, treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or valid and binding governmental restriction or requirement or any agreement with any governmental authority, now in effect, relating to the protection of the environment or to the presence or potential presence of pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials in the environment.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder or in connection therewith.

"ERISA AFFILIATE" means (a) a member of any "controlled group" (as defined in Section 414(b) of the Code) of which the Company is a member, (b) a trade or business, whether or not incorporated, under common control (within the meaning of Section 414(c) of the Code) with the Company, or (c) a member of any affiliated service group (within the meaning of Section 414(m) of the Code) of which the Company is a member.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and the rules and regulations promulgated thereunder or in connection therewith, all as the same shall be in effect from time to time.

"EXISTING REGISTRATION RIGHTS AGREEMENTS" means each agreement between the Company and any Person pursuant to which the Company has existing obligations to register any securities of the Company on behalf and for the account of such Person for resale under the Securities Act, each of which agreements is listed on ANNEX II.

"EXECUTIVE OFFICERS" shall mean the executive officers of the Company within the meaning of Item 401 of Regulation S-K of the Commission.

"FTC" means the United States Federal Trade Commission.

"FTC INVESTIGATION" means the investigation by the FTC of the Company's acquisition of the Hyprotech Business.

"GAAP" means U.S. generally accepted accounting principles consistently applied and maintained throughout the applicable periods.

"HSR ACT" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"HYPROTECH BUSINESS" means, as presently conducted, the business, including all intellectual property, key employees and contracts related thereto, acquired by the Company as of May 31, 2002 in the acquisition of Hyprotech Limited, a corporation incorporated under the laws of Alberta, Canada, and each of its Subsidiaries, including Hyprotech UK Limited, EA Systems Inc., Hyprotech Inc., AEAT Technology Canada Limited, Hyprotech India Private Ltd and Hyprotech Japan Limited.

"INDEBTEDNESS" means, of any Person at any date, without duplication, all items which in accordance with GAAP, would be included in determining total liabilities as shown on the liability side of the balance sheet as of the date to be determined, and shall include:

(a) indebtedness for borrowed money or funded debt;

(b) liabilities in respect of capitalized leases and liabilities secured by any Liens on property owned or acquired, whether or not such a liability shall have been assumed (but only to the extent of the book value of such property), including, with respect to the Company, and liabilities for amounts payable to Accenture (excluding minimum royalties not yet payable) under any of the Accenture Agreements;

(c) any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for the purpose of assuring in any other manner the obligee of such debt or other obligation for the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); PROVIDED that the obligations of any and every nature shall exclude obligations by or among one or more of the Company, any of the Subsidiaries, ASKA Technology Kabushiki Kaisha, SATech Software Engineering Co., Ltd., and Hyperion Systems Engineering Ltd.; and

(d) all reimbursement and other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured.

"INDENTURE" means that certain Indenture, dated as of June 17, 1998, by and between the Company and The Chase Manhattan Bank, as trustee.

"INTELLECTUAL PROPERTY" means all rights in and to the Copyrights, Patents, Software, Trademarks, Trade Secrets, web sites, and any other tangible or intangible proprietary or confidential information, and all improvements, modifications, and enhancements to and derivatives of any of the foregoing created or developed as of the date hereof, in whatever stage of development, owned by or licensed to the Company or any of its Subsidiaries or that have been used in, are being used in or that have been acquired or developed with the intent of use in, in whole or in part, the business of the Company or any of its Subsidiaries.

"INVESTOR RIGHTS AGREEMENT" means the Investor Rights Agreement to be dated and entered into as of the Closing Date among the Company and the Purchasers, substantially in the form of EXHIBIT E.

"LAW" means any statute, law, ordinance, code, regulation, order or rule of any federal, state, local or, foreign governmental or regulatory body or authority, including Environmental Laws and those covering safety, health, information technology, Tax, antitrust,

transportation, bribery, recordkeeping, zoning, export, import, employment and employment practices, wage and hour, and price and "age control" matters.

"LIEN" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset which is material to the Company. For the purposes of this Agreement, any Person shall be deemed to own subject to Lien any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"MAJOR PRODUCTS" means the following products of the Company and the Subsidiaries: AES, Aspen B-JAC Family, Aspen Dynamics, Aspen Enterprise Engineering, Aspen Icarus Family, Aspen OnLine, Aspen OTISS, Aspen PEP, Aspen PIMS, Aspen Pinch, Aspen Plus, Aspen Properties, Aspen Richardson Family, Aspen Split, Aspen Utilities, Aspen Water, Aspen WebModels, Aspen Zyqad, Basys, BatchPlus, Distil, Genysys, HTFS Family, HX-Net, Hysys.Dynamics, Hysys.OTS, Hysys.Process and PolymersPlus.

"MANAGEMENT RIGHTS LETTER" means the Management Rights Letter to be dated and issued as of the Closing Date by the Company in favor of those Series D-1 Purchasers designated by Advent, substantially in the form of EXHIBIT F.

"MATERIAL ADVERSE EFFECT" means any material adverse effect or series of related effects on (i) the business, assets, condition (financial or otherwise), cash flow or results of operations of the Company and the Subsidiaries, taken as a whole; or (ii) the ability of the Company to perform its obligations under this Agreement. Notwithstanding the foregoing, in no event shall any of the following constitute a Material Adverse Effect: (i) any material adverse effect or series of related effects attributable to the FTC's investigation into the Company's acquisition of the Hyprotech Business; (ii) a change in the market price or trading volume of the Company's outstanding securities; PROVIDED that such a change may be evidence of a Material Adverse Effect; (iii) any material adverse effect resulting from conditions generally affecting any industry in which the Company participates or from generally prevailing conditions in the United States or global economies; or (iv) conditions reasonably resulting from the announcement and the pendency of the transactions contemplated by this Agreement and the Transaction Documents.

"MATERIAL CONTRACT" means each contract or agreement to which the Company or any Subsidiary is a party or by which it is bound which is a material contract as defined in Item 601(b)(10) of Regulation S-K of the Commission, including the Accenture Agreements and the Existing Registration Rights Agreements.

"NASDAQ" means The Nasdaq Stock Market, Inc.

"PATENTS" means all patents, patent applications (including, without limitation, provisional applications, utility applications and design applications), reissue patents, patents of addition, divisions, renewals, continuations, continuations-in-part, substitutions, additions, reexaminations and extensions of any of the foregoing and all licenses to any of the foregoing, in any country or other geographic area in the world.

"PERSON" means an individual or a corporation, partnership, limited liability company, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"PREFERRED STOCK" means the Preferred Stock, par value $0.10 per share, of the Company.

"RIGHTS AGREEMENT" means that certain Rights Agreement, dated as of March

12, 1998, by and between the Company and American Stock Transfer and Trust Company, as rights agent, as amended prior to the date hereof (including the amendment thereto dated as of June 1, 2003 with respect to the Purchasers).

"SECURITIES ACT" means the Securities Act of 1933, as amended, and any successor thereto, and the rules and regulations promulgated thereunder or in connection therewith, all as the same shall be in effect from time to time.

"SERIES B AGREEMENT" means the Repurchase and Exchange Agreement dated as of the date hereof by and between the Company and the Series D-2 Purchasers, attached as EXHIBIT G, which contemplates, among other things, (i) the repurchase by the Company from each of the Series D-2 Purchasers of certain shares of Series B Preferred Stock on the Closing Date and (ii) the issuance by the Company to each Series D-2 Purchaser of certain warrants to purchase Common Stock in exchange for certain outstanding warrants to purchase Common Stock held by that Series D-2 Purchaser.

"SERIES B CERTIFICATE OF DESIGNATIONS" means the Certificate of Designations filed with the Secretary of State of Delaware on March 19, 2002, setting forth the rights, preference and privileges of the Series B Preferred Stock.

"SERIES D-1 PURCHASE SHARES" means the Shares to be issued pursuant to SECTION 2.01(a).

"SIGNIFICANT SUBSIDIARY" means Aspen Technology (Asia), Inc., Aspen Technology India Private Limited, AspenTech Australia Pty. Ltd., AspenTech EMEA, Inc., AspenTech Pte Ltd., AspenTech Canada Ltd., Aspen Tech Espana, S.A., AspenTech Europe B.V., AspenTech Europe S.A./N.V., AspenTech Japan Co. Ltd., AspenTech, Ltd., Aspen Technology S.r.l., AspenTech Asia, Ltd., AspenTech, Inc., AspenTech Ltd., Aspentech Pte. Ltd., Aspentech Africa (Proprietary) Limited, Hyprotech Europe SL, Hyprotech UK Limited, Hyprotech Japan KK, Hyprotech Company, and Hyprotech Canada Ltd.

"SOFTWARE" means (i) all software programs, including all versions of source code, object code, assembly language, compiler language, machine code, and all other computer instructions, code, and languages embodied in computer software of any nature whatsoever and whether for use in or in conjunction with a mainframe computer, personal computer (desk top, lap top or hand held), personal digital assistant ("PDA") or any other programmable hardware or device, and all error corrections updates, upgrades, enhancements, translations, modification, adaptations, further developments, derivative works, and other changes or functionality additions, of any kind, thereto created or developed as of the date hereof; (ii) all designs and

design documents (whether detailed or not), technical summaries, and documentation (including flow charts, logic diagrams, white papers, manuals, guides and specifications) with respect to such software described in the preceding clause; (iii) all firmware and middleware associated with the foregoing; and (iv) all licenses related to any of the foregoing.

"SUBSIDIARY" means any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is at the time directly or indirectly owned by the Company.

"SUPERIOR PROPOSAL" means any proposal relating to an Alternative Transaction (on its most recently amended or modified terms, if amended or modified) which the Board determines in its good faith judgment (after consultation with a financial advisor of nationally recognized reputation) to be (a) more favorable to the Company's stockholders, from a financial point of view, than the issuance and sale of the Securities under this Agreement (taking

into account all the terms and conditions of such Alternative Transaction and this Agreement, including any changes to the financial terms of this Agreement proposed by the Purchasers in response to such offer or otherwise), (b) for which the Board has received evidence reasonably demonstrating that any financing required in connection with the Alternative Transaction has been obtained or is then committed, and (c) reasonably capable of being completed, taking into account all financial, legal, regulatory and other aspects of such Alternative Transaction.

"TAX" (and, with correlative meaning, "TAXES") means any income, alternative or add-on minimum tax, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, withholding on amounts paid to or by the Company or any of the Subsidiaries, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee, assessment or charge in the nature of taxes, together with any interest or any penalty, addition to tax or additional amount due from, or in respect of the Company or any of the Subsidiaries, as the case may be, imposed by any domestic or foreign governmental authority (a "TAXING AUTHORITY") responsible for the imposition of any such tax, including any amounts for which liability arises under Treasury Regulation Sections 1.1502-6 or similar provision under foreign, state or local law.

"TERMINATION DATE" means December 31, 2003.

"TRADE SECRETS" means all common law and statutory trade secrets and all other confidential information or other information from which the Company or any of its Subsidiaries derive materially greater value from maintaining its confidentiality or limiting its use, whether tangible or intangible, than from not maintaining its confidentially or limiting its use, including, without limitation, patterns, designs, plans, product road maps, specifications, compilations, programs, devices, schematics, technology, methods, techniques, processes and procedures, working notes and memos, market studies, consultants' reports, know-how, research, customer lists, marketing, distribution and sales methods and systems, formulae, technical and laboratory data, competitive samples, and engineering prototypes and all similar information and know-how, whether or not reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, and all licenses to any of the foregoing, in any country or other geographic area in the world.

"TRADEMARKS" means all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, trade styles, service marks, certification marks, collective marks, logos, domain names, uniform resource locaters (URLs) and any other names and locaters associated with the Internet, other source of business identifiers, whether currently in use or not, all registrations and recordings thereof and all applications to register in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America or any State thereof or any foreign country, all reissues, extensions or renewals of any of the items described in this definition; all licenses to any of the foregoing and, all of the goodwill of the business connected with the use of, and symbolized by the any of the foregoing, in any country or other geographic area in the world.

"TRANSACTION DOCUMENTS" means this Agreement, the Charter Amendment, the Certificate of Designations, the Investor Rights Agreement, the Management Rights Letter, the Voting Agreements, the Warrants and the Series B Agreement.

"TRANSFEREE" means each Person who shall acquire any Company Securities from any Purchaser, directly or indirectly, in compliance with the Investor

Rights Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

TERM	SECTION
Active Proceedings	Section 3.10(c)
Agreement	Preamble
Allocation Percentage	Section 2.01(a)
Closing	Section 2.02(a)
Closing Date	Section 2.02(a)
Common Stock	Background
Company	Preamble
Company Properties	Section 3.18(b)
Company Proposals	Section 6.05(a)
Company Securities	Section 3.05(c)
Compensation Plan	Section 3.15(d)
Disclosure Letter	Article 3
Expense Reimbursement Amount	Section 9.03(b)
Indemnified Person	Section 8.02(c)
Indemnifying Person	Section 8.02(c)
Investment Company Act	Section 3.25
Loss Threshold	Section 8.03(a)
Losses	Section 8.02(a)
Payment Date	Section 9.03(d)
Permits	Section 3.13
Proceeding	Section 8.02(a)
Public Reports	Section 3.07(a)
Purchase Price	Section 2.01(a)

TERM	SECTION
Purchaser(s)	Preamble
Returns	Section 3.17(a)
Securities	Background
Series A Preferred Stock	Section 3.05(a)
Series B Preferred Stock	Section 3.05(a)
Series B Shares	Section 2.01(b)
Series B-I Preferred Stock	Section 3.05(a)
Series B-II Preferred Stock	Section 3.05(a)
Series C Preferred Stock	Section 3.05(a)
Series D Preferred Stock	Background
Series D-1 Loss Threshold	Section 8.03(a)
Series D-1 Preferred Stock	Background
Series D-1 Purchaser(s)	Preamble
Series D-1 Purchase Shares	Section 2.01(a)
Series D-1 Shares	Background
Series D-2 Loss Threshold	Section 8.03(a)
Series D-2 Preferred Stock	Background
Series D-2 Purchaser	Preamble
Series D-2 Shares	Background
Shares	Background
Source Code Disclosures	Section 3.12(b)
Special Meeting	Section 6.05(a)
Stock Termination Fee	Section 9.03(d)
Subsidiary Securities	Section 3.06(b)
Suits	Section 3.10(b)
Superior Proposal Notice	Section 5.08(b)
Superior Proposal Period	Section 5.08(b)
Survival Date	Section 8.01
Termination Fee	Section 9.03(b)

Trigger Event	Section 9.03(b)
Underlying Shares	Section 3.05(e)
Voting Agreements	Background
WARN Act	Section 3.08(n)
Warrants	Background

Section 1.02 INTERPRETATION AND RULES OF CONSTRUCTION. Definitions contained in this Agreement apply to singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms "includes" and the word "including" and words of similar import shall be deemed to be followed by the words "without limitation." Article, Section and paragraph and Schedule, Exhibit and Annex

references are to the Articles, Sections and paragraphs of and Schedules, Exhibits and Annexes to this Agreement unless otherwise specified. The word "or" shall not be exclusive. For purposes of this Agreement, the terms "Company" and "Subsidiary" shall include any entity which is, in whole or in part, a predecessor of the Company or any Subsidiary, unless the context expressly requires otherwise.

ARTICLE 2
PURCHASE AND SALE OF THE SECURITIES

Section 2.01 COMMITMENT TO PURCHASE.

(a) Upon the basis of the representations and warranties contained herein and subject to the terms and conditions set forth herein, the Company agrees to issue and sell to each Series D-1 Purchaser, and each such Series D-1 Purchaser, severally but not jointly, agrees to purchase from the Company, at the Closing, (i) a number of Series D-1 Shares equal to the product obtained by multiplying (w) 300,300 by (x) the percentage (the "ALLOCATION PERCENTAGE") of the Series D-1 Preferred Stock allocated to such Series D-1 Purchaser (the "SERIES D-1 PURCHASE SHARES") and (ii) Warrants to purchase a number of shares of Common Stock equal to the product obtained by multiplying (y) 6,006,006 by (z) the Allocation Percentage. The aggregate purchase price (the "PURCHASE PRICE") for the Series D-1 Shares and Warrants purchased by each Series D-1 Purchaser shall be $100,000,000 multiplied by the Allocation Percentage allocated to the Series D-1 Purchaser. The percentage allocations shall be specified by the Series D-1 Purchasers (or Advent, on behalf of the Series D-1 Purchasers) to the Company in writing, at least two Business Days prior to the Closing Date. Advent shall be entitled to resolve on behalf of the Series D-1 Purchasers any rounding issues with respect to the allocations of the Series D-1 Purchase Shares and Warrants in order to avoid the issuance of fractional shares of Series D-1 Preferred Stock and Common Stock upon the exercise of Warrants.

(b) Upon the basis of the representations and warranties contained herein and subject to the terms and conditions set forth herein, the Company agrees to issue to each Series D-2 Purchaser, and each such Series D-2 Purchaser, severally but not jointly, agrees to exchange, at the Closing, the number of shares of Series B Preferred Stock set forth opposite the name of such Series D-2 Purchaser under the heading "Series B Shares to be Exchanged" on SCHEDULE 2.01 hereto for the number of shares of Series D-2 Preferred Stock and Warrants to purchase the number of shares of Common Stock set forth opposite the name of such Series D-2 Purchaser on SCHEDULE 2.01 hereto. The shares of Series B Preferred Stock to be exchanged by the Series D-2 Purchasers for the Series D-2

Shares and Warrants are collectively referred to herein as the "SERIES B SHARES." A majority in interest of the Series D-2 Purchasers shall be entitled to resolve on behalf of all Series D-2 Purchasers any rounding issues with respect to the allocations of the Series D-2 Shares and Warrants to purchase Common Stock in order to avoid the issuance of fractional shares of Series D-2 Preferred Stock and Common Stock upon exercise of the Warrants.

Section 2.02 THE CLOSING.

(a) The purchase and sale of the Series D-1 Purchase Shares and Warrants and the issuance of the Series D-2 Shares and Warrants upon exchange of Series B Preferred Stock shall take place at a closing (the "CLOSING") at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109 commencing at 10:00 a.m. local time on (i) the first (1st) Business Day following the date of the Special Meeting contemplated by Section 6.05 or, if later, the third (3rd) Business Day following the date upon which all conditions to the obligations of the parties to consummate the transactions contemplated hereby have been satisfied or waived (other than conditions with respect to actions the respective parties will take at the Closing itself) or (ii) such other date as the parties may mutually determine but, unless otherwise agreed to in writing, not later than the Termination Date. The date and time of the Closing are referred to herein as the "CLOSING DATE."

(b) At the Closing,

(i) each Series D-1 Purchaser shall deliver to the Company by wire transfer of immediately available funds to an account designated by the Company at least two (2) Business Days prior to the Closing Date an amount equal to the Purchase Price for the Series D-1 Purchase Shares and Warrants purchased by such Series D-1 Purchaser; and

(ii) each Series D-2 Purchaser shall deliver to the Company the Series B Shares to be exchanged by such Series D-2 Purchaser for Series D-2 Shares and Warrants.

(c) At the Closing, the Company shall deliver:

(i) to each Series D-1 Purchaser, against delivery of the Purchase Price, a certificate or certificates evidencing such Series D-1 Purchaser's Series D-1 Purchase Shares and a Warrant or Warrants to purchase the total number of shares of Common Stock allocated to such Series D-1 Purchaser, each in definitive form and registered in the name of such Series D-1 Purchaser or in such nominee name as such Series D-1 Purchaser shall request at least two (2) Business Days prior to the Closing Date; and

(ii) to each Series D-2 Purchaser, upon exchange of the Series B Shares held by such Series D-2 Purchaser, a certificate or certificates evidencing such Series D-2 Purchaser's Series D-2 Shares and a Warrant or Warrants to purchase the total number of shares of Common Stock allocated to such Series D-2 Purchaser, each in definitive form and registered in the name of such Series D-2 Purchaser or in such nominee name as such Series D-2 Purchaser shall request at least two (2) Business Days prior to the Closing Date.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter dated the date of this Agreement (the "DISCLOSURE LETTER"), the Company represents and warrants to the Purchasers, as of the date hereof, as set forth below; PROVIDED, HOWEVER, the representations and warranties made in

Sections 3.09 and 3.12 hereof are not being made to the Series D-2 Purchasers. The Disclosure Letter shall be arranged in sections corresponding to the sections contained in this Agreement, and the disclosures in any section of the Disclosure Letter shall qualify (i) the corresponding section of this Agreement, and (ii) other sections of this Agreement to the extent (notwithstanding the absence of a specific cross-reference) that such disclosure reasonably relates to such other sections.

Section 3.01 EXISTENCE AND POWER. The Company (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware; (b) has the full corporate power to own, lease and operate its properties and assets and to carry on its business as now conducted; and (c) is duly qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the failure so to qualify would have, or would reasonably be expected to have, a Material Adverse Effect. The Company has furnished to the Purchasers true and complete copies of the Company's certificate of incorporation and bylaws, each as in effect on the date hereof.

Section 3.02 AUTHORIZATION. The execution, delivery and performance by the Company of this Agreement and each other Transaction Document and the consummation of the transactions contemplated hereby and thereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action on the part of Company, other than the stockholder approval to be obtained at the Special Meeting contemplated by Section 6.05. This Agreement and each of the other Transaction Documents each constitute, or will constitute upon execution, or in the case of the Charter Amendment and Certificate of Designations, upon the filing thereof with the Secretary of State of Delaware, a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms (provided that the enforceability of the Charter Amendment and Certificate of Designations will be limited as provided in the Delaware General Corporation Law). The Board has taken any action necessary to render inapplicable, as it relates to Advent, the provisions of Section 203 of the General Corporation Law of the State of Delaware.

Section 3.03 GOVERNMENTAL AUTHORIZATION. The execution, delivery and performance by the Company of this Agreement and each other Transaction Document and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any governmental body, agency or official by the Company other than (a) the filing of the Certificate of Designation and the Charter Amendment with the Secretary of State of Delaware, (b) any filings, authorizations, consents and approvals as may be required under the HSR Act; (c) the filing by the Company with the Commission of such reports and other documents under the Securities Act or the Exchange Act as may be required in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby to be effected at or prior to the Closing, and filings required to be made pursuant to the rules of Nasdaq; (d) any necessary filings with any state securities commission under state blue sky laws or filings under the Securities Act, the Exchange Act and/or pursuant to Nasdaq rules in connection with a registration of securities pursuant to the Investor Rights Agreement; and (e) filings, notices or novations required with respect to customer contracts with governmental customers.

Section 3.04 NONCONTRAVENTION. The execution, delivery and performance by the Company of this Agreement and each other Transaction Document and the consummation of the transactions contemplated hereby and thereby do not and will

not (a) violate the certificate of incorporation or bylaws of the Company, (b) violate the certificate of incorporation, bylaws, operating, limited liability or partnership agreement of any Subsidiary, (c) violate any material law, rule, regulation, judgment, injunction, order or decree applicable to the Company or any Subsidiary, (d) except as contemplated by SECTION 3.03 (other than SECTION 3.03(e)) or as otherwise disclosed on SCHEDULE 3.04, require any consent or other action by any Person under, constitute a default under, or give rise to termination, cancellation or acceleration of any right or obligation of the Company or any Subsidiary or to a loss of any benefit to which the Company or any Subsidiary is entitled under, and are not inconsistent with, any provision of any Material Contract binding upon the Company or any Subsidiary, including the Existing Registration Rights Agreements, or (e) result in the creation or imposition of any Lien on any material asset of the Company or any Subsidiary.

Section 3.05 CAPITALIZATION.

(a) The authorized capital stock of the Company consists of (i) 120,000,000 authorized shares of Common Stock, and (ii) 10,000,000 authorized shares of Preferred Stock, of which (A) 400,000 shares have been designated as Series A Preferred Stock (the "SERIES A PREFERRED STOCK"); (B) 40,000 shares have been designated as Series B-I Convertible Preferred Stock (the "SERIES B-I PREFERRED STOCK"), (C) 20,000 shares have been designated as Series B-II Convertible Preferred Stock (the "SERIES B-II PREFERRED Stock" and, together with the Series B-I Preferred, the "SERIES B PREFERRED STOCK") and (D) 60,000 shares have been designated as Series C Preferred Stock (the "SERIES C PREFERRED STOCK"). A total of 9,480,000 shares of Preferred Stock remain authorized and undesignated and can be issued by the Board without further stockholder approval, except as required by the Series B Certificate of Designations.

(b) As of May 28, 2003, there were (i) 39,215,538 shares of Common Stock issued and outstanding, (ii) no shares of Series A Preferred Stock issued and outstanding, (iii) 40,000 shares of Series B-I Preferred Stock issued and outstanding, (iv) 20,000 shares of Series B-II Preferred Stock issued and outstanding, (v) no shares of Series C Preferred Stock issued and outstanding and (vi) 230,430 shares of Common Stock held as treasury stock. SCHEDULE 3.05(b) sets forth a list of the record holders of all issued and outstanding shares of Series B Preferred Stock. Except as otherwise provided on SCHEDULE 3.05(b), the Company has not paid any dividends or made any other distributions of cash or other property in respect of any shares of its outstanding capital stock.

(c) All outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and none of such shares has been issued in violation of any preemptive right, right of first refusal or similar right under any provision of the General Corporation Law of the State of Delaware, the Company's certificate of incorporation or bylaws, or any agreement, document or instrument to which the Company is a party or by which it is otherwise bound. Except as set forth in this Section or in SCHEDULE 3.05(b) or (c), and except for the rights granted to the Purchasers in this Agreement or the Series B Agreement, there are no outstanding (i) shares of capital stock or other voting securities of the Company, (ii) securities of the Company convertible into, or exchangeable or exercisable for,

shares of capital stock or other voting securities of the Company or (iii) options, warrants or other rights to acquire from the Company, or other obligation of the Company to issue, any capital stock, other voting securities or securities convertible into, or exchangeable or exercisable for, capital stock or other voting securities of the Company (the items in clauses 3.05(c)(i), 3.05(c)(ii) and 3.05(c)(iii) being referred to collectively as the "COMPANY SECURITIES"). There are no obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any outstanding Company Securities, except (i) with respect to the redemption rights of the Series B Preferred Stock

set forth in the Series B Certificate of Designations and of the Convertible Debentures set forth in the Indenture and (ii) as set forth in the Series B Agreement.

(d) Upon issuance at the Closing, (i) all of the Shares will be duly and validly authorized and issued, fully paid and non-assessable, free and clear of all Liens (other than Liens imposed under the Investor Rights Agreement and the Securities Act and other than Liens relating to, or resulting from actions of, the Purchasers), and (ii) all of the Warrants will be duly and validly authorized and issued; and the issuance of the Securities will not (x) violate, trigger anti-dilution adjustments under, or be subject to any preemptive rights or right of first refusal or similar right under, any provision of the General Corporation Law of the State of Delaware, the Company's certificate of incorporation or bylaws, or any agreement, document or instrument to which the Company is a party or by which it is otherwise bound (and which will be in effect immediately following the Closing) or (y) violate any applicable federal or state or foreign securities laws as a result of any act or omission by any Person other than the Purchasers.

(e) Prior to Closing and the issuance of the Securities, the Company shall have reserved for issuance the total number of shares of Common Stock issuable upon conversion of the authorized amount of Series D Preferred Stock based upon the conversion ratio then in effect and upon the exercise of Warrants at the initial exercise price, as set forth in the Certificate of Designations and the Warrants. All shares of Common Stock so initially issuable upon conversion of the Series D Preferred Stock and exercise of the Warrants (the "UNDERLYING SHARES") have been duly authorized and, when issued in accordance with the terms of the Certificate of Designations and the Warrants, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens (other than Liens relating to, or resulting from actions of, the Purchasers), and the issuance thereof will not (i) violate or trigger anti-dilution adjustments under, or be subject to any preemptive rights or right of first refusal or similar right under, any provision of the General Corporation Law of the State of Delaware, the Company's certificate of incorporation or bylaws, or any agreement, document or instrument to which the Company is a party or by which it is otherwise bound or (ii) violate any applicable federal or state or foreign securities laws as a result of any act or omission by any Person other than the Purchasers.

(f) All outstanding shares of capital stock of the Company and the Subsidiaries have been issued in compliance with all applicable federal and state and foreign securities laws.

Section 3.06 SUBSIDIARIES.

(a) All of the Subsidiaries and their respective jurisdictions of incorporation or organization are identified in SCHEDULE 3.06(a). Except as set forth in SCHEDULE 3.06(a), there exists no other corporation or other entity of which the Company directly or indirectly owns or holds the rights to acquire any capital stock or other ownership interests of any Person. Each Subsidiary is duly incorporated or organized, validly existing and (to the extent applicable) in good standing under the laws of its jurisdiction of incorporation or organization and has the full corporate power to own, lease and operate its properties and assets and to carry on its business as now conducted. Each Subsidiary is duly qualified to transact business and (to the extent applicable) is in good standing in each jurisdiction in which the failure so to qualify would have, or would reasonably be expected to have, a Material Adverse Effect.

(b) Except as set forth in SCHEDULE 3.06(b), all of the outstanding capital stock or other voting securities of each Subsidiary is owned by the Company, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell

or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of the Company or any Subsidiary convertible into, or exchangeable or exercisable for, shares of capital stock or other voting securities of any Subsidiary or (ii) options, warrants or other rights to acquire from the Company or any Subsidiary, or other obligation of the Company or any Subsidiary to issue, any capital stock, other voting securities or securities convertible into, or exchangeable or exercisable for, capital stock or other voting securities of any Subsidiary (the items in clauses 3.06(b)(I) and 3.06(b)(II) being referred to collectively as the "SUBSIDIARY SECURITIES"). There are no outstanding obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

Section 3.07 PUBLIC REPORTS; FINANCIAL STATEMENTS.

(a) Since July 1, 2002, the Company has filed with the Commission all forms, reports, schedules, proxy statements (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein and including all registration statements and prospectuses filed with the Commission, the "PUBLIC REPORTS") required to be filed by the Company with the Commission. As of its date of filing, except to the extent otherwise disclosed in subsequently filed Public Reports, each Public Report complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and the rules and regulations promulgated thereunder and, except to the extent revised or superseded by a subsequent filing with the Commission prior to the date hereof, none of such Public Reports (including any and all financial statements included therein) when filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) Except to the extent otherwise disclosed in Public Reports, each of the consolidated financial statements (including the notes thereto) included in the Public Reports complied as to form in all material respects, as of its date of filing with the Commission, with applicable accounting requirements and the published rules and regulations of the Commission with respect thereto, was prepared in accordance with GAAP (except as may otherwise be indicated in the notes thereto) and fairly presents in all material respects the consolidated financial position of Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited financial statements, to (i) normal year-end adjustments, (ii) the absence of

footnote disclosure required to be included in audited financial statements and (iii) as otherwise permitted by the Commission on Form 10-Q under the Exchange Act, which collectively were not or are not expected to be in the aggregate material).

(c) The information set forth in SCHEDULE 3.07(c) is true and accurate.

Section 3.08 ABSENCE OF CERTAIN CHANGES SINCE BALANCE SHEET DATE. The Company and the Subsidiaries have conducted their businesses since the Balance Sheet Date in the ordinary course. Without limiting the generality of the foregoing, since the Balance Sheet Date, except as disclosed in SCHEDULE 3.08, there has not been any:

(a) event or series of related events which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect;

(b) notice, whether written or oral, received by the Company from any staff member of the FTC or other FTC personnel regarding the FTC Investigation that the Bureau of Competition, or office of comparable authority, of the FTC has

made, or has concluded that it will make, a recommendation to the Commissioners of the FTC that the Company or any Subsidiary will be required to take any action, or that the FTC intends to initiate litigation against the Company or any Subsidiary, in each case, which would, or would reasonably be expected to, result in the Company's inability to satisfy the conditions set forth in SECTION 7.01(h);

(c) declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company (other than dividends on the Series B Preferred Stock paid in shares of Common Stock), or any repurchase, redemption or other acquisition by the Company or any Subsidiary of any outstanding shares of capital stock or other securities of the Company or any Subsidiary;

(d) incurrence, assumption or guarantee by the Company or any Subsidiary of any Indebtedness, other than in the ordinary course of business, consistent with past practices and which, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(e) creation or other incurrence by the Company or any Subsidiary of any Lien on any material asset other than in the ordinary course of business consistent with past practices;

(f) making of any loan, advance or capital contributions to or investment by the Company or any Subsidiary in any Person, other than (i) loans, advances or capital contributions to or investments in wholly-owned Subsidiaries and (ii) loans to employees to advance reasonable and customary expenses to be incurred by them in the performance of their duties on behalf of the Company or any Subsidiary, in each case made in the ordinary course of business consistent with past practices;

(g) acquisition, disposition or similar transaction by the Company or any Subsidiary involving any material assets, properties or liabilities (other than sales of inventory in

the ordinary course of business consistent with past practices), whether by merger, purchase or sale of stock, purchase or sale of assets or otherwise;

(h) damage, destruction or other casualty loss (whether or not covered by insurance) which has not had, or would reasonably be expected to have, a Material Adverse Effect;

(i) Tax election or change in any method of accounting or accounting practice by the Company or any Subsidiary, except for any such change after the date hereof required by reason of a concurrent change in U.S. generally accepted accounting principles;

(j) resignation or, except as approved by the Board, any termination or removal of any Executive Officers;

(k) increase in the compensation of, or Employee Benefits made available to, any of the Executive Officers or in the rate of pay or Employee Benefits of any of its employees, except as part of regular compensation increases in the ordinary course consistent with past practices;

(l) labor dispute, other than routine individual grievances, or written notice of any, or, to the Company's Knowledge, any threatened, activity or proceeding by a labor union or representative thereof to organize any employees of the Company or any Subsidiary, which employees were not subject to a collective bargaining agreement at the Balance Sheet Date, or any lockouts, strikes, slowdowns, or work stoppages by or with respect to any employees of the Company or any Subsidiary, nor, to the Company's Knowledge, has any Person threatened to initiate any such activity;

(m) Material Contract (other than the Transaction Documents) entered into, or any relinquishment or waiver by the Company or any Subsidiary of any material right under any Material Contract, and none of the Company or any of its Subsidiaries has taken or omitted to take, and, to the Company's Knowledge, no third party has taken or omitted to take, any action that constitutes, or would with the passage of time constitute, a default under any Material Contract; or

(n) (i) "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN ACT")), or (ii) "mass layoff" (as defined in the WARN Act); nor has the Company or any of the Subsidiaries engaged in or given notice of layoffs or employment terminations sufficient in number to trigger application of any similar state or local law, with respect to which, under either (i) or (ii) above or under state or local law, the Company or any of the Subsidiaries has any current liability material to the Company and the Subsidiaries taken as a whole.

Section 3.09 NO UNDISCLOSED MATERIAL LIABILITIES.

(a) Except as otherwise set forth in SCHEDULE 3.09(a), there are no liabilities of the Company or any Subsidiary of any kind whatsoever, whether accrued, contingent, unliquidated, absolute, determined, unknown or otherwise, other than:

(i) liabilities provided for in the Company's financial statements included in the Public Reports, disclosed in the notes to the financial statements set forth therein or incurred in the ordinary course of business since the Balance Sheet Date which liabilities, both individually and in the aggregate, are not material to the Company and its Subsidiaries, taken as a whole;

(ii) liabilities which would not be required to be provided for in an audited balance sheet or disclosed in the notes thereto that is prepared in accordance with GAAP;

(iii) liabilities disclosed on any Schedule to this Agreement; and

(iv) other undisclosed liabilities which, both individually and in the aggregate, are not material to the Company and its Subsidiaries, taken as a whole.

(b) Except for leases for personal or real property entered into in the ordinary course of business, and except for instruments, arrangements or agreements referred to in this Agreement or disclosed in SCHEDULE 3.09(b), the Company has not issued any instruments, entered into any agreements, commitments or arrangements or incurred any obligations that would have, or would reasonably be expected to have, the effect of providing the Company with "off balance sheet" financing, including, without limitation, any sale-leaseback arrangements, "synthetic leases", "GIC"s, "Synthetic GIC"s, shared trust arrangements and "off balance sheet" Indebtedness.

Section 3.10 LITIGATION; REGULATORY COMPLIANCE.

(a) Except as set forth in SCHEDULE 3.10(a), none of the Company or any of the Significant Subsidiaries has been served with, or has otherwise received written notice of, any Suit against the Company or any of the Significant Subsidiaries and, to the Company's Knowledge, no Suit is pending against the Company or any Significant Subsidiary for which service of process or other written notice has not yet been received. To the Company's Knowledge, (i) no Suit has been threatened against the Company or any of the Significant Subsidiaries, or as to matters related to the business of the Company or any of its current or former Subsidiaries, against any Affiliate of the Company or any of the Subsidiaries, and (ii) there is no reasonable basis upon which any Suit

may be initiated against the Company or any of the Significant Subsidiaries, in each case, which is reasonably expected to have a Material Adverse Effect.

(b) The term "SUITS" includes any action, suit, claim, litigation, arbitration or other dispute resolution proceeding or governmental or administrative proceeding, audit or investigation, including (i) any proceedings, audits, investigations or arbitrations by the Internal Revenue Service, the Commission, the National Association of Securities Dealers, Inc., Nasdaq, the FTC, the National Labor Relations Board, any domestic stock exchanges, quotation systems or other self-regulatory organizations, any foreign securities commissions, foreign stock exchanges, foreign regulatory organizations or foreign self-regulatory organizations, or state securities commissions; (ii) any action, suit, proceeding or investigations by any Person that the Intellectual Property infringes or misappropriates or constitutes unfair competition or trade practices or other violation of such Person's intellectual property or other proprietary rights; and

(iii) any action, suit, proceeding or investigation involving (A) the prior employment of any of the Company's or any Subsidiary's employees, (B) the use by such employees in connection with the Company's business or any Subsidiary's business of any information or techniques allegedly proprietary to any of their former employers, (C) the obligations of such employees under any agreements with prior employers, or (D) negotiations by the Company or any Subsidiary with potential backers of, or investors in, the Company, any Subsidiary or their proposed businesses.

(c) Except as set forth in SCHEDULE 3.10(c), neither the Company nor any Subsidiary is party to or bound by (i) any agreement to pay damages or fines to, or provide indemnification, contribution or expense reimbursement to any Person with respect to any matter that is the subject of a Suit (the "ACTIVE PROCEEDINGS"), or (ii) any release of any claims that it may have against any Person with respect to any matter that is the subject of the Active Proceedings. No such Person has given written notice to the Company or any of the Subsidiaries of its intention to seek such indemnification or expense reimbursement.

(d) Neither the Company nor any Subsidiary is a named party in any material outstanding order, writ, injunction, judgment, arbitration award or decree of any court, arbitrator, government agency, or instrumentality.

Section 3.11 COMPLIANCE WITH LAWS.

(a) The Company and each of the Subsidiaries has complied with, is not in violation of, and has not received any written notices alleging any violation with respect to, any applicable provisions of any Laws with respect to the conduct of its business, or the ownership or operation of its properties or assets, except for failures to comply or violations that have not had, and would not reasonably be expected to have, a Material Adverse Effect.

(b) The Company has had in effect a policy regarding insider trading since at least January 1997, and the Company is not aware of any violation thereof. A copy of the current version of such policy has been provided by the Company to the Purchasers.

Section 3.12 INTELLECTUAL PROPERTY.

(a) With respect to the products listed on SCHEDULE 3.12(a), and, to the Company's Knowledge, with respect to all other products of the Company and its Subsidiaries, the Company and the Subsidiaries either: (i) own the entire right, title and interest in and to the Intellectual Property, free and clear of any liens, charges and encumbrances, without (A) the making of any payment to others where the failure to make such payment would result in the loss of all or any portion of the Company's or any Subsidiary's right, title and interest in and to

such Intellectual Property, or (B) the obligation to grant rights to others in exchange; or (ii) have the legally binding right, including, without limitation, joint ownership rights, or license to use the Intellectual Property in the manner in which the Company or the Subsidiaries has used or is using the Intellectual Property in the business of the Company and/or the Subsidiaries, except where the absence of (i) and/or (ii) would not have, and would not reasonably be expected to have, a Material Adverse Effect.

(b) It is, and has been the Company's and its Subsidiaries' policy and practice to require all current and former officers, employees, agents, developers, consultants or contractors who (i) have access to any Intellectual Property to execute confidentiality and nondisclosure agreements that protect the confidentiality of the Trade Secrets of the Company and the Subsidiaries in favor of the Company and/or the Subsidiaries and (ii) contribute to or participate in the creation and/or development of any Intellectual Property to execute "work made for hire" or invention assignment agreements that ensure ownership of the Intellectual Property in the Company and/or its Subsidiaries. Each current and former officer, employee, agent, developer, consultant and contractor who (x) has had or has access to any Intellectual Property has executed a confidentiality and nondisclosure agreement that protects the confidentiality of the Trade Secrets of the Company and the Subsidiaries in favor of the Company and/or the Subsidiaries; and (y) contributed to or participated in the creation and/or development of any Intellectual Property either: (1) is a party to a "work made for hire" agreement under which either the Company or a Subsidiary is deemed to be the original owner/author of all right, title and interest in the Intellectual Property created or developed by such Person; or (2) has executed an assignment or an agreement to assign in favor of either the Company or a Subsidiary of all such Person's right, title and interest in the Intellectual Property, except, in the case of either (x) or (y), where the absence of such an agreement would not have, and would not reasonably be expected to have, a Material Adverse Effect. Except in the ordinary course of business or as set forth on SCHEDULE 3.12(b), neither the Company nor any of the Subsidiaries has licensed, leased, sold, placed in escrow or otherwise transferred or disclosed to any Person the source code for any Software that constitutes any part of the Intellectual Property (the "SOURCE CODE DISCLOSURES"). Assuming compliance by the parties thereto other than the Company with the terms and conditions set forth in the contractual arrangements relating to the Source Code Disclosures set forth on SCHEDULE 3.12(b) or made in the ordinary course of business, none of such Source Code Disclosures would have, or would reasonably be expected to have, a Material Adverse Effect. The Company and the Subsidiaries either own or have the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party software used in the creation or development of, incorporated in or required to create, modify, compile, operate or support any of the Software. Without limiting the foregoing, except as set forth on SCHEDULE 3.12(b), no open source or public library software, including, without limitation, any software licensed pursuant to any GNU public license, is or was used in the creation, development or modification of or is or was incorporated into any Intellectual Property. None of the uses of open source or public library software set forth on SCHEDULE 3.12(b) would have, or would reasonably be expected to have, a Material Adverse Effect.

(c) All contracts, including, without limitation, all licenses, relating to or affecting the Intellectual Property are legal, valid, binding and enforceable, except for those contracts which if found not to be legal, valid, binding or enforceable would not have, and would not reasonably be expected to have, a Material Adverse Effect. None of the Company, any of the Subsidiaries or, to the Company's Knowledge, any other party is in default under any contract relating to or affecting any of the Intellectual Property, except where such default would not have, and would not reasonably be expected to have, a Material Adverse Effect.

(d) None of the Company or any of the Significant Subsidiaries has been served with, or has otherwise received written notice of, any Suit against the Company or any of the Significant Subsidiaries and, to the Company's Knowledge, no Suit is pending against the Company or any Significant Subsidiary for which service of process or other written notice has not yet been received involving any proceedings or actions before any court or tribunal (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) in any country or other geographic area in the world related to or affecting the Intellectual Property owned by the Company or any of its Subsidiaries which would have, or would reasonably be expected to have, a Material Adverse Effect.

(e) The execution and delivery of this Agreement and consummation of the transactions contemplated hereby will not result in the breach of, or create on behalf of any third party the right to terminate or modify, any license, sublicense or other agreement: (i) relating to or affecting any Intellectual Property, including, without limitation, Software that is used in the manufacture of, incorporated in, or forms a part of any product or service that has been sold by, is sold by or is expected to be or contemplated to be sold by the Company or any of the Subsidiaries; or (ii) pursuant to which the Company or any of the Subsidiaries is granted a license or otherwise authorized to use any third party Intellectual Property, including, without limitation, Software that is used in the manufacture of, incorporated in, or forms a part of any product or service that has been sold by, is sold by or is expected or contemplated to be sold by the Company or any of the Subsidiaries, except those licenses, sublicenses or agreements which if breached, terminated or modified would not have, and would not reasonably be expected to have, a Material Adverse Effect.

(f) All Patents and all copyright and trademark applications and registrations, including, without limitation, those Patents and copyright and trademark applications and registrations set forth on SCHEDULE 3.12(f): (i) are in compliance with all formal legal requirements (including, without limitation, filing, examination and maintenance fees, recordations and proofs of use) and have been registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, United States Copyright Office or such other governmental authority and the foreign equivalents of the foregoing; and (ii) if registered, are valid, subsisting and enforceable, have not been abandoned and, as to all applications to register any unregistered Copyrights, Patents and Trademarks, are pending and in good standing without challenge of any kind except where the absence of (i) and/or (ii) would not have, and would not reasonably be expected to have, a Material Adverse Effect.

(g) Except as set forth on SCHEDULE 3.12(g), to the Company's Knowledge, no Person is infringing, violating, misappropriating or making unauthorized use of any of the Intellectual Property owned by the Company. The Company and its Subsidiaries have enforced and taken such commercially reasonable steps as are necessary to protect and preserve all rights in the Intellectual Property against the infringement, violation, misappropriation and unauthorized use thereof by any Person. The Company or its Subsidiaries have the right to: (i) bring actions for past, present and future infringement, dilution, misappropriation or unauthorized use of the Intellectual Property owned by Company or any of its Subsidiaries, injury to goodwill associated with the use of any Intellectual Property owned by the Company or any of its Subsidiaries, unfair competition or trade practices violations of and other violation of

the Intellectual Property owned by the Company or its Subsidiaries in any country or other geographic area in the world; and (ii) with respect to the Intellectual Property owned exclusively by the Company and the Subsidiaries, receive all proceeds from the foregoing set forth in subsection (i) hereof,

including, without limitation, licenses, royalties income, payments, claims, damages and proceeds of suit; except where the absence of (i) and/or (ii) would not have, and would not reasonably be excepted to have, a Material Adverse Effect.

(h) With respect to the products listed on SCHEDULE 3.12(a) or, to the Company's Knowledge, any other products of the Company and its Subsidiaries, none of the business or activities previously or currently conducted by the Company or any of the Subsidiaries infringes, violates or constitutes a misappropriation or unauthorized use of, any intellectual property, including, without limitation, any Copyrights, Patents, Trademarks and Trade Secrets of any Person, except for such infringements, violations, misappropriations or unauthorized uses that would not have, and would not reasonably be expected to have, a Material Adverse Effect. Except as set forth in SCHEDULE 3.12(g), none of the Company or any of the Significant Subsidiaries has been served with, or has otherwise received written notice of, any Suit against the Company or any of the Significant Subsidiaries and, to the Company's Knowledge, no Suit is pending against the Company or any Significant Subsidiary for which service of process or other written notice has not yet been received, alleging any such infringement, violation, misappropriation or unauthorized use and there is no reasonable basis upon which any complaint, claim or notice involving such an allegation may be initiated against the Company or its Subsidiaries, in each case which is reasonably expected to have a Material Adverse Effect.

(i) Except as set forth in SCHEDULE 3.12(i), no Person (including but not limited to, any agent or agency of any United States or foreign national, state or local governmental authority) has been supplied by the Company with any key, "backdoor" or other mechanism to reverse, defeat, disable, or weaken the full strength power of the encryption, centralized management interface, and other similar protections provided by or resident in the Software.

Section 3.13 LICENSES AND PERMITS. The Company and each of the Subsidiaries has all material franchises, authorizations, memberships, approvals, orders, consents, licenses, certificates, permits, registrations, qualifications or other rights and privileges of any U.S. or foreign governmental or self-regulatory authority or agency or political subdivision thereof (collectively, "PERMITS") necessary to permit the ownership of property and the conduct of business as presently conducted by the Company and the Subsidiaries, and all such Permits are valid and in full force and effect. No such Permit is reasonably expected to be terminated as a result of the execution of this Agreement, the Transaction Documents or consummation of the transactions contemplated hereby or thereby.

Section 3.14 EMPLOYEE MATTERS.

(a) SCHEDULE 3.14(a) sets forth a true, complete and accurate list of all Employee Benefit Plans, other than Employee Benefit Plans maintained for a single individual (i) who is not a "highly compensated employee" within the meaning of Section 414(q) of the

Code and (ii) that provide total severance payments not in excess of 12 months' salary and/or welfare benefit continuation following termination of employment for not more than 18 months.

(b) Each of the Employee Benefit Plans conforms (and at all times has conformed) in all material respects to, and is being administered and operated (and has at all times been administered and operated) in material compliance with, the requirements of ERISA, the Code and all other applicable laws. All returns, reports and disclosures required to be made under ERISA, the Code or any other applicable law with respect to the Employee Benefit Plans have been timely filed or made, and all statements made on such returns, reports and disclosures been true and complete in all material respects. Neither the Company nor any ERISA Affiliate has incurred any material liability for any tax, excise

tax, or penalty with respect to any Employee Benefit Plan, and no event has occurred and no circumstance exists or has existed that would reasonably be expected to give rise to a material liability for any such tax or penalty.

(c) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code has been determined by the Internal Revenue Service to be so qualified and exempt or a timely application for such determination has been made or will be made with respect to the initial qualification of each such Employee Benefit Plan. Any such Internal Revenue Service determination remains in effect and has not been revoked. Nothing has occurred since the date of any such determination that is reasonably expected to affect adversely such qualification or exemption.

(d) The Company has delivered or made available to the Purchasers true, complete and accurate copies of the following documents: (i) all plan documents, amendments and trust agreements relating to each Employee Benefit Plan listed on SCHEDULE 3.14(a); (ii) the most recent annual and periodic accountings of plan assets; (iii) the most recent Internal Revenue Service determination or notification letter for each Employee Benefit Plan that is an "employee pension benefit plan" (as that term is defined in Section 3(2) of ERISA) and a list identifying any amendment not covered by such determination or notification letter; (iv) annual reports filed on Form 5500 (including accompanying schedules) for each Employee Benefit Plan for the past three years, if such reports were required to be filed; (v) the current summary plan description, if any is required by ERISA, for each Employee Benefit Plan; and (vi) all insurance contracts, annuity contracts, investment management or advisory agreements, administration contracts, service provider agreements, audit reports, fidelity bonds and fiduciary liability policies relating to any Employee Benefit Plan; and (vii) all material correspondence with any governmental authority relating to any Employee Benefit Plan.

(e) Except as set forth in SCHEDULE 3.14(e), there are no pending or, to the Knowledge of the Company, threatened claims by or on behalf of any Employee Benefit Plan, or by or on behalf of any individual participants or beneficiaries of any Employee Benefit Plan, alleging any violation of ERISA or any other applicable laws or regulations, or claiming payments (other than benefit claims made and expected to be approved in the ordinary course of the operation of such plans), nor is there any basis for such claim. Except as set forth in SCHEDULE 3.14(e), no Employee Benefit Plan is the subject of any pending or, to the Company's Knowledge, threatened investigation or audit by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other regulatory agency, foreign or domestic.

(f) Except as set forth in SCHEDULE 3.14(f), all contributions to and payments from the Employee Benefit Plans, have been timely made.

(g) There has been no amendment to, written interpretation or announcement (whether or not written) relating to, or change in employee participation or coverage under, any Employee Benefit Plan which, when aggregated with all such amendments, written interpretations, announcements or changes, would increase materially the aggregate expense of maintaining the Employee Benefit Plans above the level of the expense incurred in respect thereof for the fiscal year of the Company ending immediately prior to the date hereof. Except as set forth in SCHEDULE 3.14(g), each Employee Benefit Plan may be amended or terminated, at any time determined by the Company in its sole discretion, except as limited by law and with respect to previously accrued benefits.

(h) The Company and the ERISA Affiliates do not sponsor, participate in or contribute to, and have not in the past sponsored, participated in or contributed to, and have no current or contingent obligation with respect to: (1) any defined benefit pension plan subject to Title IV of ERISA, (2) any "multiemployer plan" (as defined in Section 3(37) of ERISA), (3) except as set forth in SCHEDULE 3.14(h), any plan or arrangement that provides post retirement

medical benefits, death benefits or other welfare benefits, except to the extent required by Part 6 of Title I of ERISA or any similar law, or (4) any "welfare benefit fund" (within the meaning of Section 419 of the Code).

Section 3.15 KEY EMPLOYEES AND EXECUTIVE COMPENSATION.

(a) SCHEDULE 3.15(a)-1 sets forth a true and complete list of the names, titles, annual salaries and other compensation of all present officers of the Company and the Subsidiaries and all other present employees of the Company and the Subsidiaries whose annual base salary exceeds $175,000 or whose annual commissions exceeded $250,000 in the most recent fiscal year. As of the date hereof, none of the individuals listed on SCHEDULE 3.15(a)-2 has indicated that he or she intends to resign or retire as a result of the transactions contemplated by this Agreement or otherwise within one year following the Closing Date.

(b) Except as set forth in SCHEDULE 3.15(b), neither the Company nor any Subsidiary, for the one year period ending June 30, 2002, has made any payment of any amount to any employee or former employee that would not be deductible pursuant to Section 162(m) of the Code.

(c) Except as set forth in SCHEDULE 3.15(c), the execution of and performance of the transactions contemplated by this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) result in: (i) any payment to or acceleration, vesting or increase in the rights of any employee or former employee of the Company or the Subsidiaries, or (ii) any "excess parachute payment" (as defined in Section 280G of the Code) to any current or former employee of the Company or the Subsidiaries.

(d) The Company has delivered to Advent a true and correct copy of the Corporate Equity and Executive Management Compensation Plan adopted by the Compensation Committee of the Board on June 1, 2003 (the "COMPENSATION PLAN").

Section 3.16 LABOR MATTERS. Except as set forth in SCHEDULE 3.16:

(a) none of Company or any of the Subsidiaries is a party to or bound by any collective bargaining or similar agreement, letter of understanding or any other agreement, formal or informal, with any labor organization, or work rules or practices agreed to with any labor organization or employee association applicable to employees of the Company or any of the Subsidiaries in the United States;

(b) none of the employees of the Company or any of the Subsidiaries is represented by any labor organization; and

(c) the Company has provided the Purchasers with true, complete and accurate copies of all written employee handbooks, policy manuals and other material personnel policies, rules or procedures applicable to employees of the Company or any of the Subsidiaries.

Section 3.17 TAXES. Except as set forth in SCHEDULE 3.17:

(a) the Company and each of the Subsidiaries has filed in accordance with all applicable laws, all Tax returns, statements, reports and forms (collectively, the "RETURNS") required to be filed with any Taxing Authority when due (taking into account any extension of a required filing date);

(b) such Returns were true, complete and accurate in all material respects;

(c) the Company has paid when due all Taxes that were required to be withheld and paid to a taxing authority with respect to payments made to employees, independent contractors and any other person payments to whom are subject to tax withholding;

(d) the charges, accruals and reserves reflected on the Balance Sheet (excluding any provision for deferred income taxes) are adequate to cover the Tax liabilities accruing through the date thereof;

(e) there are no pending audits of any Tax Returns of the Company and the Subsidiaries;

(f) neither the Company nor any of the Subsidiaries has any obligation under any tax sharing agreement, tax allocation agreement, tax indemnification agreement or any other agreement or arrangement in respect of any Tax with any Person or any distributions made or to be made with respect to Taxes;

(g) neither the Company nor any of the Subsidiaries has been a member of any affiliated, consolidated, combined or unitary group other than one in which the Company was the common parent;

(h) the Company is not now, and has never been a "United States Real Property Holding Corporation" as defined in Section 897(c)(2) of the Code and Section 1.897-2(b) of the Treasury Regulations promulgated thereunder;

(i) none of the Subsidiaries that are not formed under the laws of the United States has made an investment in U.S. property, as defined by Section 956 of the Code; and

(j) the Subsidiaries are and, since the date of their acquisition or formation (as the case may be) by the Company, have been corporations as defined in Treasury Regulation 301.7701-2.

Section 3.18 ENVIRONMENTAL MATTERS.

(a) The Company and each of the Subsidiaries: (i) has not received written notice from any Person that the Company or any of the Subsidiaries is not or has not been in compliance with any Environmental Laws; (ii) currently holds all material Permits and all financial assurance required under any Environmental Laws for the Company and each of the Subsidiaries to operate their business; and (iii) has not engaged in any conduct that has or reasonably would be expected to give rise to any material claim, loss, damage, or other liability under any Environmental Law.

(b) To the Company's Knowledge, except as set forth in SCHEDULE 3.18(b), (i) there are no asbestos or asbestos-containing materials or polychlorinated biphenyls in or on (A) any real property, buildings, structures or components thereof currently leased by the Company or any of the Subsidiaries or operated by the Company or any of the Subsidiaries or (B) any property, buildings, structure or components thereof formerly owned or leased by the Company or any of the Subsidiaries during the period of such ownership or lease (collectively, the "COMPANY PROPERTIES") and (ii) there are and have been no underground or aboveground storage tanks (whether or not required to be registered under any applicable law), dumps, landfills, lagoons, surface impoundments, sumps, injection wells or other disposal or storage sites or locations in or on any Company Properties.

(c) Neither the Company nor any of the Subsidiaries has received any written notice or, to the Company's Knowledge, any other communications from any Person stating or alleging that any of them may become a potentially responsible party under any Environmental Law (including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and any state analog thereto) with respect to any actual or alleged environmental contamination. None of the Company, the Subsidiaries, or, to the Company's Knowledge, any governmental agency or authority, or any other Person

is conducting or has conducted or is proposing or threatening to conduct any environmental remediation or investigation which reasonably would be expected to result in material liability of the Company or any of the Subsidiaries under any Environmental Law or require disclosure under the Securities Act, Exchange Act or Nasdaq rules.

Section 3.19 CERTAIN PAYMENTS. To the Company's Knowledge, neither the Company nor any of the Subsidiaries nor any of their respective current or former directors, officers, employees, agents or Affiliates has, on behalf of the Company or any Subsidiary or in connection with their respective businesses, (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (b) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds, (c) established or maintained any unlawful or unrecorded fund of corporate

monies or other assets, (d) made any false or fictitious entries on the books and records of the Company or (e) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

Section 3.20 AFFILIATE TRANSACTIONS. Since June 30, 2002, all transactions (other than those relating to services as directors or employees) between or among the Company or any Subsidiary, on the one hand, and any Affiliate of the Company (other than a Subsidiary), on the other hand, have been in the ordinary course of business, consistent with past practices, and have been on fair and reasonable terms, no less favorable to the Company or any Subsidiary than such terms as reasonably could be expected to be obtained in a comparable arm's-length transaction with an unaffiliated Person.

Section 3.21 FINDERS' FEES. Other than for the fees and disbursements in the amounts and to the entities described in SCHEDULE 3.21 (all of which shall be paid by the Company) and except for the fees and expenses of the Purchasers to be paid by the Company pursuant to the terms of this Agreement, no investment banker, broker, finder or other intermediary has been retained by or is authorized to act on behalf of the Company or any Subsidiary who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 3.22 RIGHTS AGREEMENT. Pursuant to the terms of that certain amendment dated June 1, 2003 to the Rights Agreement, a true and complete copy of which has been provided to the Purchasers, the Company has amended the Rights Agreement to ensure that (a) none of the Purchasers is intended to be or will be deemed to be an "Acquiring Person" within the meaning of the Rights Agreement as a result of the execution and delivery of this Agreement or the acquisition of the Securities or the Underlying Shares upon a conversion in accordance with the terms of the Certificate of Designations or an exercise in accordance with the terms of the Warrants; and (b) the acquisition of the Securities and the Underlying Shares upon a conversion in accordance with the terms of the Certificate of Designations or an exercise in accordance with the terms of the Warrants shall not, under any circumstances, trigger a "Distribution Date" within the meaning of the Rights Agreement.

Section 3.23 NASDAQ NATIONAL MARKET. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the Nasdaq National Market under the symbol "AZPN," and, except as contemplated by this Agreement, the Company has taken no action designed to, or expected to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market. Except as set forth in SCHEDULE 3.23, the Company has not received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing. The Company is not currently in violation of the Nasdaq listing standards. There

are no matters with respect to which the Company has received notice of violation or deficiency from Nasdaq that, to the Company's Knowledge, remain open or unresolved.

Section 3.24 NO MANIPULATION OF STOCK. Neither the Company, nor any Person authorized to, or with authority to, act on its behalf, has taken, in violation of applicable law, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Stock.

Section 3.25 NON-INVESTMENT COMPANY. The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "INVESTMENT COMPANY ACT"). The Company is not, and immediately after receipt of payment for the Securities will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act.

Section 3.26 GENERAL SOLICITATION; NO INTEGRATION. Neither the Company, nor any Person authorized to, or with authority to, act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the Securities. The Company has not, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the Securities sold pursuant to this Agreement.

Section 3.27 ACCOUNTING CONTROLS. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorizations, (b) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and to maintain assets accountability, (c) access to assets is permitted only in accordance with management's general or specific authorization and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Section 3.28 ACKNOWLEDGEMENT REGARDING PURCHASERS' PURCHASE OF SECURITIES. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives.

Section 3.29 ACKNOWLEDGEMENT OF DILUTION. The Company acknowledges that the issuance of the Securities (including the Underlying Shares) will result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that, subject to the satisfaction by the Purchasers of their obligations under the Transaction Documents, the Company's obligations under the Transaction Documents, including without limitation its obligation to issue the Securities (including the Underlying Shares) pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off,

counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim that the Company may have against any Purchaser.

Section 3.30 FORM S-3 ELIGIBILITY. The Company has the ability to register its Common Stock for resale by the Purchasers under Form S-3 promulgated under the Securities Act.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER

Each Purchaser, severally as to itself and no other Purchaser, (and provided that the Series D-2 Purchasers are not making the representations and warranties in Section 4.09 below) hereby represents and warrants to the Company as of the date hereof that:

Section 4.01 EXISTENCE AND POWER. Such Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

Section 4.02 AUTHORIZATION. Such Purchaser has the power to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and, if other than a natural person, has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and such other Transaction Documents. This Agreement constitutes, and each of the other Transaction Documents to which it is a party, when executed and delivered by such Purchaser, will constitute, a valid and binding agreement of such Purchaser, enforceable in accordance with its terms.

Section 4.03 GOVERNMENTAL AUTHORIZATION. The execution, delivery and performance by such Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, require no material action by or in respect of, or material filing with, any governmental body, agency or official, by such Purchaser other than (a) any filings, authorizations, consents and approvals as may be required under the HSR Act; (b) the filing by such Purchaser with the Commission of such reports under the Exchange Act as may be required in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby to be effected at or prior to the Closing, and filings required to be made pursuant to Nasdaq rules; and (c) any filings required by the securities or blue sky laws of the various states and filings under the Securities Act and/or the Exchange Act each in connection with a registration pursuant to the Investor Rights Agreement.

Section 4.04 NONCONTRAVENTION. The execution, delivery and performance by such Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby do not and will not violate the organizational documents of such Purchaser, if such Purchaser is other than a natural person, or any applicable material law, rule, regulation, judgment, injunction, order or decree.

Section 4.05 PRIVATE PLACEMENT. Such Purchaser is acquiring Securities pursuant to this Agreement for investment and not with a view to the resale or distribution of such Securities or any interest therein, without prejudice, however, to such Purchaser's right, subject to compliance with the Transaction Documents (including the Investor Rights Agreement), at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws. Nothing contained herein shall be

deemed a representation or warranty by such Purchaser to hold Securities for any period of time. Such Purchaser is acquiring the Shares hereunder in the ordinary course of business. Except as contemplated by the Investor Rights Agreement, such Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of such Securities. The Purchaser has not been organized, reorganized or recapitalized specifically for the purpose of investing in such Securities. At all times since the time such Purchaser was initially offered Securities, such Purchaser has been an "accredited investor" as such term is defined in Regulation D under the Securities Act.

Section 4.06 ACCESS TO INFORMATION. Such Purchaser acknowledges that it has been afforded: (a) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (b) access to information about the Company and the Subsidiaries and their respective financial condition sufficient to enable it to evaluate its investment; and (c) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel, nor any other provisions of this SECTION 4.06, shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the representations and warranties contained in the Transaction Documents to which it is a party.

Section 4.07 GENERAL SOLICITATION. Such Purchaser is not purchasing Securities as a result of any advertisement, article, notice or other communication regarding such Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

Section 4.08 RELIANCE. Such Purchaser understands and acknowledges that (a) the Securities are being offered and sold to it without registration under the Securities Act in a private placement that is exempt from the registration provisions of the Securities Act and (b) the availability of such exemption depends in part on, and the Company will rely upon the accuracy and truthfulness of, the foregoing representations and such Purchaser hereby consents to such reliance.

Section 4.09 ABSENCE OF LITIGATION. Such Series D-1 Purchaser has not been served or otherwise received written notice of any Suit against such Series D-1 Purchaser, and, to such Series D-1 Purchaser's knowledge, no such Suit is otherwise pending or threatened, by or before any court or other governmental body or arbitrator against such Series D-1 Purchaser or any of its Affiliates in which an unfavorable outcome, ruling or finding in any said matter, or for all such matters taken as a whole, questions this Agreement or any of the Transaction Documents to which such Series D-1 Purchaser is a party or seeks to or would reasonably be expected to delay or prevent the consummation of the transactions contemplated hereunder or thereunder, or the right of such Series D-1 Purchaser to execute, deliver and perform hereunder or thereunder.

Section 4.10 FINDERS' FEES. Except for fees and expenses of the Purchasers to be paid by the Company pursuant to the terms of this Agreement, such Purchaser has not retained or authorized an investment banker, broker, finder or other intermediary to act on behalf of such

Purchaser who might be entitled to any fee or commission from the Company or any of its Affiliates upon consummation of the transactions contemplated by this Agreement.

ARTICLE 5
COVENANTS OF THE COMPANY

Section 5.01 NOTICES OF CERTAIN PRE-CLOSING EVENTS. From the date hereof until the Closing Date, the Company shall notify each Series D-1 Purchaser of the occurrence of any of the following circumstances or events promptly following the Company's becoming aware of such circumstances or events:

(a) the Company's receipt of any written notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement or the other Transaction Documents;

(b) the Company's receipt of any notice or other communication from the Commission, Nasdaq or any other governmental or regulatory agency or authority (other than the FTC) regarding any of the terms set forth in the Certificate of Designations, the proxy contemplated by SECTION 6.05 or the Transaction Documents in connection with the transactions contemplated by this Agreement or the other Transaction Documents;

(c) the Company's or any Significant Subsidiary's receipt of written notice of any Suit pending or, to the Company's Knowledge, threatened against the Company or any of the Significant Subsidiaries, and any judgment, injunction, order, decree or arbitration award relating to or involving or otherwise affecting the Company or any Subsidiary, that, if pending or, to the Company's Knowledge, threatened on the date of this Agreement, would have been required to have been disclosed on SCHEDULE 3.10;

(d) any event or series of related events, which, individually or in the aggregate, would have, or would reasonably be expected to have, a Material Adverse Effect; and

(e) any event which reasonably causes the Company to believe that any of the conditions to Closing set forth in SECTIONS 7.01and 7.02, including SECTIONS 7.01(b) and 7.01(g), cannot be satisfied;

(f) any significant development regarding the FTC Investigation; PROVIDED, HOWEVER, that the Company may decline to provide notice under this SECTION 5.01(f), if in its reasonable judgment, based on advice of counsel, such notice would (i) cause it to waive its attorney client privilege or (ii) have an adverse effect on its ability to come to a favorable resolution with the FTC.

Section 5.02 USE OF PROCEEDS. The Company will use the proceeds from the issuance and sale of the Series D-1 Purchase Shares and Warrants to the Series D-1 Purchasers solely as follows:

(a) to effect one of the following: (i) to repurchase at a discount to face value an aggregate principal amount of the Convertible Debentures prior to maturity to be mutually agreed upon by the Company and the D-1 Purchasers, (ii) to create a separate account the sole purpose of which is to fund either, at the Company's option, redemption at maturity of the Convertible Debentures, or such uses as the Company and the D-1 Purchasers mutually agree;

(b) to repurchase certain shares of Series B Preferred Stock as

contemplated by the Series B Agreement;

(c) for general working capital of the Company and the Subsidiaries of not more than $15,000,000 unless the Company and the Series D-1 Purchasers agree otherwise; and

(d) to pay fees and expenses incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby;

PROVIDED, HOWEVER, that, except as specifically permitted under this Section 5.02, the net proceeds from issuance and sale of the Series D-1 Purchase Shares and Warrants to the Series D-1 Purchasers shall not be used to repurchase or redeem any capital stock or other securities of the Company or any of the Subsidiaries.

Section 5.03 CAPITAL STOCK MATTERS.

(a) The Company will file the Certificate of Designations prior to the Closing Date with the Secretary of State of Delaware in accordance with Delaware law.

(b) The Company will reserve and will keep available for issuance at all times when any shares of Series D Preferred Stock and Warrants are outstanding, solely for the purpose of effecting the conversion of the Series D Preferred Stock and Warrants, the total number of Underlying Shares issuable upon conversion of the outstanding shares of Series D Preferred Stock and exercise of the outstanding Warrants.

(c) The Company shall use all commercially reasonable efforts to comply with all applicable Nasdaq National Market eligibility requirements and Nasdaq Marketplace Rules and to follow recommendations by Nasdaq.

(d) The Company shall file with Nasdaq, a Notification Form for Listing Additional Shares with respect to the Underlying Shares within twenty (20) days after the date of this Agreement.

Section 5.04 INSURANCE. For so long as the holders of the Series D-1 Preferred Stock have the right to elect directors of the Company pursuant to the Certificate of Designations, the Company shall use all commercially reasonable efforts to carry and maintain any insurance against directors' and officers' liability to cover such directors to the same extent as directors elected by the holders of Common Stock; PROVIDED, HOWEVER, that if the aggregate annual premiums for such insurance exceed two hundred percent (200%) of the per annum rate of premium currently paid by the Company on the date of this Agreement for such insurance, then

the Company shall provide the maximum coverage that shall then be available at an annual premium equal to two hundred percent (200%) of such rate.

Section 5.05 TAX ELECTIONS; CHANGES IN ACCOUNTING PRACTICES. From the date hereof until the Closing Date, the Company shall not make any material Tax election or material change in any method of accounting or accounting practice of the Company or any Subsidiary except for any such change required by reason of a concurrent change in U.S. generally accepted accounting principles.

Section 5.06 PRE-CLOSING CONDUCT OF THE COMPANY.

(a) From the date hereof until the Closing Date, the Company shall, and shall cause each of the Subsidiaries to:

(i) conduct its and their businesses in the ordinary course;

(ii) use its and their commercially reasonable efforts to preserve intact its and their business organizations and relationships with third parties;

(iii) maintain all applicable Permits and authority to do business;

(iv) fund each Employee Benefit Plan in accordance with the terms of such plan and with respect to benefits accrued or claims incurred through the Closing Date, including the payment of applicable premiums on any insurance contract funding an Employee Benefit Plan for coverage provided through the Closing Date;

(v) timely file each Public Report required to be filed by the Company in accordance with the requirements of the Securities Act and the Exchange Act, as applicable, and the rules and regulations promulgated thereunder;

(vi) proceed diligently and in good faith in the pursuit of its strategies to resolve the FTC Investigation; and

(vii) at the Company's discretion, enter into an employment agreement with Lawrence B. Evans, which agreement shall be substantially on the terms provided to Advent on the date hereof.

(b) Without limiting the generality of the foregoing, from the date hereof until the Closing Date, the Company will not, and will not permit any of the Significant Subsidiaries to:

(i) adopt or propose any change in the certificate of incorporation or bylaws of the Company, other than the filing with the Secretary of State of Delaware, at or prior to Closing, of the Certificate of Designations, the Charter Amendment and a certificate of elimination with respect to the Series B Preferred Stock and the Series C Preferred Stock, all in accordance with the General Corporation Law of the State of Delaware;

(ii) issue any shares of Preferred Stock, other than shares of Series A Preferred Stock issuable under the terms of the Rights Agreement or file any certificate of designations creating any class of Preferred Stock other than the Certificate of Designations;

(iii) issue any shares of Common Stock other than shares of Common Stock issuable (A) upon the exercise of options, warrants or other rights (including rights under the Company's employee stock purchase plan) to acquire from the Company, or other obligations of the Company to issue, shares of Common Stock, (B) upon conversion or exchange of securities of the Company convertible into or exchangeable for, shares of Common Stock, in each case, as set forth in SCHEDULE 3.05(d) (c) to Accenture in accordance with the Accenture Agreements, or (D) as quarterly dividends on the Series B Preferred Stock (it being understood that the Company may elect to pay such quarterly dividends in cash);

(iv) issue any (A) securities of the Company convertible into, or exchangeable or exercisable for, shares of capital stock or other voting securities of the Company or (B) options, warrants or other rights to acquire from the Company, or other obligations of the Company to issue, any capital stock, other voting securities or securities convertible into, or exchangeable or exercisable for, capital stock or other voting securities of the Company, other than options and restricted stock issued in the ordinary course of business and in accordance with the Compensation Plan;

(v) split, combine or reclassify any shares of the capital stock or other securities of the Company or any Subsidiary;

(vi) merge or consolidate with any other Person (other than a Subsidiary), or acquire a significant portion of the business assets of any other Person (other than a Subsidiary);

(vii) sell, lease, license or otherwise dispose of any material assets or property except in the ordinary course of business;

(viii) take, commit to take or intentionally omit to take, any action, that would result, or would reasonably be expected to result, in any of the conditions to the obligations of any Purchaser set forth in Section 7.01 not being satisfied;

(ix) except as may be required by law or as may be necessary to preserve an Employee Benefit Plan's qualified status under Section 401 of the Code, adopt, terminate, amend, extend, or otherwise change any Employee Benefit Plan in a manner that, when aggregated with all such adoptions, terminations, amendments, extensions or changes, would materially increase the aggregate costs of the Employee Benefit Plans without the prior written consent of Purchaser; PROVIDED, HOWEVER, that the Company will give the Purchasers prior written notice of the Company's intention to take any such action that will not materially increase the costs thereof or that is required by law or necessary to continue the qualified status of any Employee Benefit Plan;

(x) release any party from any confidentiality agreement by which such party is bound that was entered into in connection with a contemplated purchase of

securities of the Company, or from its obligations under any agreements relating to covenants not to purchase the Company's securities or other standstill obligations;

(xi) amend, rescind or modify any of the terms set forth in the Compensation Plan; or

(xii) agree or commit to do any of the foregoing.

Section 5.07 PRE-CLOSING ACCESS TO INFORMATION. From the date hereof until the Closing Date, the Company will, and will cause each Subsidiary to, (a) during regular business hours, and upon reasonable notice, give each Series D-1 Purchaser, its counsel, financial advisors, auditors and other authorized representatives, full access to the offices, properties, books and records of the Company and the Subsidiaries upon reasonable notice by the Series D-1 Purchasers to Company; (b) furnish to each Series D-1 Purchaser, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Company or any Subsidiary as such Persons may reasonably request, except to the extent that furnishing any such information or data would violate any law, order, contract or license applicable to the Company or any Subsidiary or by which any of their respective assets and/or properties is bound; and (c) instruct the employees, counsel (including the Company's outside counsel in the FTC Investigation), auditors and financial advisors of the Company or any Subsidiary to cooperate with each Series D-1 Purchaser in its investigation of the Company and the Subsidiaries. No investigation by any Purchaser, its counsel, financial advisors, auditors or other authorized representatives or any other Person, and no information received by any Purchaser, its counsel, financial advisors, auditors or other authorized representatives or any other Person, shall operate as a waiver or otherwise affect any representation, warranty, covenant or agreement given or made by the Company hereunder. The rights of the Purchasers

under this SECTION 5.07 may be limited by the Company to the extent that the Company, based on the advice of counsel, determines in its reasonable judgment that the exercise of such rights would have, or would reasonably be expected to have, an adverse effect on (i) the Company's ability to preserve attorney client privilege with respect to matters relating to the FTC Investigation or (ii) its ability to come to a favorable resolution with the FTC.

Section 5.08 NO SOLICITATION.

(a) Subject to SECTION 5.08(b), the Company agrees that it will not, and that it will cause each of the Subsidiaries and each of their respective directors and officers to, and the Company will use all commercially reasonable efforts to ensure that each of the Company's agents, advisors (including its legal counsel and financial advisors) and employees, do not, directly or indirectly: (i) initiate, solicit or encourage, or take any action to facilitate the making of, any offer or proposal from any Person which constitutes, or would reasonably be expected to result in, an Alternative Transaction or an inquiry with respect thereto; (ii) enter into any agreement with respect to any Alternative Transaction; or (iii) engage in negotiations or discussions with, or provide any information or data to, any Person other than the Purchasers or any of their affiliates or representatives relating to any Alternative Transaction, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage any effort or attempt by any Person to do or seek any of the foregoing.

(b) Notwithstanding anything set forth in SECTION 5.08(a) to the contrary, the Company may furnish information in response to an unsolicited written proposal (provided such proposal was not solicited by Credit Suisse First Boston LLC, the Company's legal counsel or any other agent of the Company) regarding an Alternative Transaction and engage in negotiations with a Person relating to any such Alternative Transaction if, but only if, the Board determines in good faith that (i) such Alternative Transaction is reasonably expected to result in a Superior Proposal and (ii) after consultation with its independent outside counsel, the failure to furnish such information or engage in such negotiations would reasonably be expected to violate the Board's fiduciary duties under applicable law; PROVIDED, HOWEVER, that the Company shall notify the Purchasers orally (with written confirmation to follow within 24 hours) of any inquiries, expressions of interest, proposals or offers received by, the Company or any of the Subsidiaries or any of their representatives relating to any Alternative Transaction indicating, in such notice, the name of the Person submitting the Alternative Transaction proposal in question and the terms and conditions of such proposal; PROVIDED, FURTHER, that the Company shall notify the Purchasers orally (with written confirmation to follow within 24 hours) of any Superior Proposal, which notice shall identify the Person submitting the Superior Proposal and include a summary of the terms and conditions of such Superior Proposal (a "SUPERIOR PROPOSAL NOTICE"), The Company shall permit the Purchasers a period of five (5) Business Days after receipt of a Superior Proposal Notice (the "SUPERIOR PROPOSAL PERIOD") to submit to the Company a new proposal in response to the Superior Proposal that is the subject of the Superior Proposal Notice. After one such Superior Proposal Period, the Board shall determine whether and how, in its sole discretion in light of its fiduciary obligations under applicable law, to proceed with respect to the Superior Proposal and the Purchasers' response.

(c) The Company agrees that it will, and it will cause each of the Subsidiaries and each of their respective directors and officers to, and that it will use all commercially reasonable efforts to cause each of its employees, advisors (including its legal counsel and financial advisors) and agents to, immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any Alternative Transaction.

(d) Neither the Board nor any committee thereof shall, except as permitted by this SECTION 5.08(d), (i) withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to the Purchasers, the approval or recommendation by the Board or such committee of this Agreement and the transactions contemplated hereby, (ii) approve or recommend, or propose publicly to approve or recommend, any Alternative Transaction, or (iii) authorize the Company to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement related to any Alternative Transaction. Notwithstanding the foregoing, in the event that, prior to the approval of the issuance and sale of the shares of Series D Preferred Stock under this Agreement and the Charter Amendment by the stockholders of the Company, the Board determines in good faith, after it has received a Superior Proposal and after consultation with independent outside counsel, that the failure to approve or recommend such Superior Proposal would reasonably be expected to violate the Board's fiduciary duties under applicable law, the Board may withdraw or modify its approval or recommendation of this Agreement and the transactions contemplated hereby but only after such time that the Board considers any adjustments in the terms and conditions of this Agreement

submitted by the Purchasers during the Superior Proposal Period. The Board shall provide the Purchasers' with prior notice of the Board's intention to so withdraw or modify its approval and/or recommendation not less than two (2) Business Days prior to such withdraw or modification.

(e) Nothing contained in this SECTION 5.08 or SECTION 6.05 shall prohibit the Company from (i) taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act or (ii) making any disclosure to its stockholders, in each case, if, in the good faith judgment of the Board, after consultation with independent outside counsel, the failure to take such position or make such disclosure would violate, or would reasonably be expected to violate, applicable law.

Section 5.09 CERTAIN ACTIONS OR OMISSIONS. Notwithstanding anything to the contrary in this Agreement, (a) the Company and its Subsidiaries may take or omit to take any action that it is required to take or omit to take in order to comply with any order issued by the FTC, any settlement agreement entered into between the FTC and the Company or any Subsidiary or pursuant to any other resolution of the FTC Investigation negotiated with the FTC; and (b) (i) no representation, warranty, covenant or agreement of the Company set forth in this Agreement shall be considered breached, and (ii) no condition to closing to the obligations of the Purchasers shall be considered to have failed to be satisfied, as a result of any such action or omission by the Company, unless, with respect to this clause (ii), the condition set forth in SECTION 7.01(h) shall not be satisfied.

Section 5.10 UPDATE OF DISCLOSURE. On or prior to the Closing Date, the Company shall deliver to the Purchasers written notice of any event or development that (a) renders any statement, representation or warranty of the Company in this Agreement (including the Disclosure Letter) inaccurate or incomplete in any material respect; (b) constitutes or results in a breach by the Company of, or a failure by the Company to comply with, any agreement or covenant in this Agreement applicable to it; and (c) occurs after the date hereof which, if it had occurred prior to the date hereof, would have caused or constituted, or would have reasonably been expected to have caused or constituted, a breach or default of any of the representations or warranties of the Company contained in or referred to in this Agreement (including any Schedules or Annexes). Any disclosure made by the Company pursuant to clause (a) of the prior sentence that specifically references the provisions of this SECTION 5.10 shall be deemed to amend and supplement the Disclosure Letter for all purposes of this Agreement other than SECTIONS 9.04(a)(IV), 9.04(a)(V) ,

9.04(b) and 9.03 (but only to the extent Section 9.03 relates to the provisions of Section 9.04(a)(iv) and Section 9.04(a)(v)).

ARTICLE 6
COVENANTS OF THE COMPANY AND THE PURCHASERS

Section 6.01 FURTHER ASSURANCES. Each of the Series D-1 Purchasers, severally as to itself, agrees with the Company and the Company agrees with the Series D-1 Purchasers, to use and to cause each Subsidiary to use, all commercially reasonable efforts to cause the conditions to Closing set forth in SECTIONS 7.01 and 7.02 to be satisfied and to execute and deliver such documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions

contemplated by this Agreement or any other Transaction Document. In no event shall the Series D-2 Purchasers be entitled to any benefit of this covenant vis-a-vis the other Purchasers, including any right to enforce it against the other Purchasers or to claim damages against any other Purchaser for breach of it.

Section 6.02 CERTAIN FILINGS.

(a) The Company and each Purchaser shall file with the proper authorities all forms and other documents which are necessary pursuant to the HSR Act, and the regulations promulgated thereunder, as promptly as possible and shall cooperate with each other in promptly producing such additional information as those authorities may reasonably require to allow early termination of the notice period provided by the HSR Act or as otherwise necessary to comply with statutory requirements of the FTC or the Department of Justice.

(b) The Company and each Purchaser agree to cooperate with each other (i) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority other than pursuant to SECTION 6.02(a) is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 6.03 PUBLIC ANNOUNCEMENTS. Subject to the terms of Section 5.02 of the Series B Agreement, except as may be required by law or Nasdaq regulations, each of the Purchasers, severally as to itself, and the Company agrees to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby.

Section 6.04 TAX CONSISTENCY. Each Purchaser, severally as to itself and no other Purchaser, and the Company each confirms that the Series D Preferred Stock is intended to be "common stock" for purposes of Section 305 of the Code and the Company agrees not to take any actions inconsistent with such intention and to file all documents required to be filed by it with any Taxing Authority in a manner consistent with the foregoing intention, unless otherwise required by a final determination of the issue, as defined in Section 1313 of the Code.

Section 6.05 PROXY STATEMENT.

(a) The Company, in consultation with the Purchasers, shall use all commercially reasonable efforts to prepare and file with the Commission, as promptly as practicable after the date hereof, but in no event later than twenty (20) days after the date hereof, preliminary proxy materials with respect to a meeting of the stockholders (the "SPECIAL MEETING") for the purpose of approving the issuance and sale of the Securities hereunder, the Charter Amendment (which

includes amendments to effect a reverse stock split, increase the number of shares of Common Stock and Preferred Stock authorized for issuances and reduce the par value of Company securities), the adoption of the Company's 2003 Stock Incentive Plan and an amendment to the Company's 1995 Director Stock Option Plan, as amended (collectively, the

"COMPANY PROPOSALS"); PROVIDED, HOWEVER, that, prior to filing any such preliminary proxy materials with the Commission, the Company shall afford the Purchasers reasonable opportunity (which shall not be less than two (2) Business Days) to review and comment on any such preliminary proxy materials; and PROVIDED, FURTHER, that the Company shall not file any preliminary proxy materials to which the Purchasers reasonably object. Thereafter, the Company, in consultation with the Purchasers, shall promptly file with the Commission the definitive proxy statement and, acting through the Board, (i) call a Special Meeting to be held at the earliest practicable date but in no event later than 45 days after the earlier of (a) receiving notification that the Commission is not reviewing the preliminary proxy materials and (b) the conclusion of any Commission review of the preliminary proxy materials, for the sole purpose of voting upon the approval of the Company Proposals and (ii) subject to SECTION 5.08(d), include in the proxy statement the recommendation of the Board that holders of the Common Stock approve the Company Proposals; and PROVIDED, HOWEVER, that, prior to filing any such definitive proxy statement with the Commission, the Company shall afford the Purchasers reasonable opportunity (which shall not be less than two (2) Business Days) to review and comment on any change reflected in such definitive proxy statement; PROVIDED, FURTHER, that the Company shall not file any definitive proxy statement to which the Purchasers reasonably objected. Neither prior to nor at the Special Meeting shall the Company put forth any matter, other than those matters relating to transactions expressly contemplated by this Agreement, to the holders of Common Stock for their approval without the prior written consent of Advent.

(b) Each of the Company, on the one hand, and each of the Purchasers, severally and not jointly, on the other hand, hereby agrees that the information provided and to be provided by it specifically for use in the preliminary proxy material and the definitive proxy statement shall not, on the date upon which the definitive proxy statement is mailed to the stockholders of the Company or on the date of the Special Meeting contemplated by this Agreement contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company and each of the Purchasers agrees to correct promptly any such information provided by it that shall have become false or misleading in any material respect, and the Company shall take all steps necessary to file with the Commission any amendment or supplement to the definitive proxy statement so as to correct the same and to cause such definitive proxy statement as so corrected to be disseminated to the Company's stockholders to the extent required by applicable law.

(c) Any proxy solicitation materials prepared and filed by the Company with the Commission and/or delivered to the Company's stockholders pursuant to this Section 6.05, including the preliminary proxy materials and definitive proxy statement to be filed in accordance with SECTION 6.05(a), shall comply as to form in all material respects with the provisions of the Exchange Act.

ARTICLE 7
CONDITIONS TO CLOSING

Section 7.01 CONDITIONS TO EACH PURCHASER'S OBLIGATIONS. The obligation of each Series D-1 Purchaser to purchase the Series D-1 Purchase Shares and Warrants hereunder and the obligation of each Series D-2 Purchaser to exchange Series B Shares for Series D-2 Shares and

Warrants hereunder is subject to the satisfaction or waiver by (i) the Series D-1 Purchasers acquiring a majority of the Series D-1 Preferred Stock hereunder and (ii) the Series D-2 Purchasers acquiring a majority of the Series D-2 Preferred Stock hereunder, at or prior to the Closing Date, of the following conditions:

(a) No provision of any applicable law or regulation shall have been enacted, no judgment, injunction, order, decree or arbitration award shall have been issued, and no Suit, of which any party hereto shall have received notice, shall be pending or threatened, in any case which seeks to prohibit, and which would reasonably be expected to result in the enjoinment of, any of the transactions contemplated by this Agreement.

(b) Each of the following conditions shall have been satisfied:

(i) The Company and each of the other Purchasers shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date;

(ii) the representations and warranties of the Company and each of the other Purchasers made in this Agreement which are qualified as to "materiality," "Material Adverse Effect" or words of similar meaning shall have been true and correct when made on the date hereof and shall be true and correct at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which, on the Closing Date need to be true and correct as of the particular date referenced therein);

(iii) all other representations and warranties of the Company and the other Purchasers made in this Agreement shall have been true and correct in all material respects when made on the date hereof and shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which, on the Closing Date, need to be true and correct as of the particular date referenced therein); and

(iv) with respect to the foregoing conditions of the Company, the Series D-1 Purchasers and the Series D-2 Purchasers shall each have received a certificate signed by the Chief Executive Officer or Chief Financial Officer of the Company to the foregoing effect; except, however, in the case of clauses (ii) and (iii), for changes expressly contemplated by this Agreement.

For purposes of this SECTION 7.01(b), "other Purchasers" means, (i) with respect to the Series D-1 Purchasers, the Series D-2 Purchasers and (ii) with respect to the Series D-2 Purchasers, the Series D-1 Purchasers.

(c) The Company and the Subsidiaries shall have received or obtained all governmental and regulatory (non-customer) consents, and all material third-party consents, authorizations or approvals (domestic and foreign) necessary for the consummation of the transactions contemplated hereby, in each case in form and substance reasonably satisfactory to each of (i) the Series D-1 Purchasers and (ii) the Series D-2 Purchasers, and no such consent, authorization or approval shall have been revoked.

(d) The waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated.

(e) The issuance and sale of the Securities shall have been approved and adopted at the Special Meeting, at which a quorum is present, by the requisite vote of the stockholders of the Company under applicable law, the rules of Nasdaq, and the Company's certificate of incorporation and bylaws.

(f) No proceeding with respect to the Proxy Statement shall have been initiated or threatened in writing by the Commission.

(g) No event or series of related events shall have occurred that shall have had or that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) There shall not have been any consent agreement with, or public announcement by, the FTC with respect to its investigation into the Company's acquisition of the Hyprotech Business that requires or directs the Company or any of the Subsidiaries to divest, whether by sale, exclusive license or otherwise, (x) all or any substantial portion of the business or assets of the Hyprotech Business, (y) any of the Major Products or (z) the intellectual property, staff or contracts material to the development, maintenance, marketing, licensing, sales or support of the Major Products such that the Company and the Subsidiaries cannot develop, maintain, market, license, sell or support the Major Products that are the subject of such consent agreement or directive.

(i) If such Purchaser is a Series D-1 Purchaser, all Series D-1 Purchase Shares and Warrants shall have been issued at the Closing in exchange for the aggregate Purchase Price therefore in accordance with SECTION 2.02(b)(I) and SECTION 2.02(c)(I) and the other provisions of this Agreement; and if such Purchaser is a Series D-2 Purchaser all applicable Series B Shares shall have been exchanged at the Closing for Series D-2 Shares and Warrants in accordance with SECTION 2.02(b)(II) and SECTION 2.02(c)(II) and the other provisions of this Agreement.

(j) The transactions contemplated by the Series B Agreement shall be completed on the Closing Date simultaneously with the Closing on the terms provided in the Series B Agreement without waiver or amendment thereto unless reasonably acceptable to the Series D-1 Purchasers.

(k) The Company shall have delivered evidence reasonably satisfactory to such Purchaser that its Adjusted Quick Ratio (as defined in the Loan and Security Agreement between the Company and certain of its Subsidiaries and Silicon Valley Bank, dated January 30, 2003, as such agreement is in effect on the date hereof) as of the last fiscal quarter end of the Company preceding the Closing Date shall be at least 1.4:1.

(l) The Purchasers shall have received from each party thereto (other than such Purchaser) either (i) a counterpart of the Transaction Documents (including the Investor Rights Agreement), signed on behalf of such party, or (ii) a facsimile transmission of signature

pages to the Transaction Documents (including the Investor Rights Agreement), signed on behalf of such party.

(m) Each Purchaser shall have received one or more certificates evidencing the Shares issuable to such Purchaser hereunder and one or more Warrants issuable to such Purchaser hereunder, and such certificates evidencing such Securities shall be in definitive form and registered in such names as such

Purchaser shall have requested.

(n) The Company shall have filed the Certificate of Designations with the Secretary of State of Delaware, and each Purchaser shall have received copies thereof, together with a long-form good standing certificate issued by the Secretary of State of Delaware as of a date no earlier than five (5) days prior to the Closing Date with respect to the good standing certificate and immediately prior to the Closing in the case of the Certificate of Designations.

(o) No issues shall have been raised by Nasdaq with respect to the Notification Form for Listing of Additional Shares filed pursuant to SECTION 5.03(d) which remain unresolved.

(p) Each Purchaser shall have received an opinion, dated the Closing Date, of Hale and Dorr LLP, counsel to the Company, in the form of EXHIBIT H.

(q) If such Purchaser is a Series D-1 Purchaser, it shall have received an executed copy of the Management Rights Letter from the Company.

(r) The Board shall be comprised of nine (9) directors, of which the number of directors allowed to be designated by the holders of Series D-1 Preferred Stock pursuant to the Series D Certificate shall have been elected to serve on the Board commencing immediately after the Closing; PROVIDED that if the D-1 Purchasers shall have designated less than the permitted number of directors within ten (10) days of the date hereof, the Board shall be comprised of a number of directors equal to nine (9) minus the number of permitted directors not designated by the Series D-1 Purchasers within ten (10) days of the date hereof.

(s) The Company shall have paid, in accordance with SECTIONS 9.03(b) and (D), the reasonable expenses of Advent and the Purchasers incurred prior to the Closing Date in connection with the transactions contemplated by the Transaction Documents to the extent invoices reasonably satisfactory to the Company were received at least two days prior to Closing.

(t) Each Purchaser shall have received (i) a certification from the Secretary of the Company that the documents delivered to the Purchasers pursuant to subsection (n) above, together with the Certificate of Incorporation (including the certificates of designation) of the Company in effect on the date hereof, constitute the entire charter of the Company, and that none of such documents have been amended, modified or supplemented, and (ii) all other documents reasonably requested by it relating to the existence of the Company, the corporate authority for entering into, and the validity of, this Agreement and each other Transaction Document to which such Purchaser is a party, all in form and substance reasonably satisfactory to such Purchaser.

(u) The individuals designated as "key employees" on SCHEDULE 3.15(a)-2 shall continue to be employed by the Company in the same position as such individuals were employed on the date hereof.

Section 7.02 CONDITIONS TO COMPANY'S OBLIGATIONS. The obligations of the Company to issue and deliver the Securities to the Purchasers hereunder are subject to the satisfaction or waiver by the Company, at or prior to the Closing Date, of the following conditions:

(a) No provision of any applicable law or regulation shall have been enacted, no judgment, injunction, order, decree or arbitration award shall have been issued, and no Suit, of which any party hereto shall have received notice, shall be pending or threatened, in any case which seeks to prohibit, and which would reasonably be expected to result in the enjoinment of, any of the transactions contemplated by this Agreement.

(b) (i) Each of the Purchasers shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date, (ii) the representations and warranties of the several Purchasers made to the Company in this Agreement and any other Transaction Document which are qualified as to "materiality," "Material Adverse Effect" or words of similar meaning shall have been true and correct when made on the date hereof and shall be true and correct at and as of the Closing Date, as if made at and as of such date and (iii) all other representations and warranties of the several Purchasers made to the Company in this Agreement and any other Transaction Document shall have been true and correct in all material respects when made on the date hereof and shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date.

(c) The Company and the Subsidiaries shall have received or obtained all governmental and regulatory (non-customer) consents, and all material third-party consents, authorizations or approvals (domestic and foreign) necessary for the consummation of the transactions contemplated hereby, in each case in form and substance reasonably satisfactory to such the Company, and no such consent, authorization or approval shall have been revoked.

(d) The waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated.

(e) The issuance and sale of the Securities shall have been approved and adopted at the Special Meeting, at which a quorum is present, by the requisite vote of the stockholders of the Company under applicable law, the rules of Nasdaq, and the Company's certificate of incorporation and bylaws.

(f) No proceeding with respect to the Proxy Statement shall have been initiated or threatened in writing by the Commission.

(g) The transactions contemplated by the Series B Agreement shall have been completed on or prior to the Closing Date by the Series D-2 Purchasers in a manner reasonably acceptable to the Company.

(h) The Company shall have received from each other party thereto either (i) a counterpart of the Transaction Documents, signed on behalf of such party, or (ii) a facsimile transmission of signature pages to the Transaction Documents, signed on behalf of such party.

(i) The Company shall have received the aggregate Purchase Price for the Series D-1 Purchase Shares and Warrants from the Series D-1 Purchasers and the Series B Shares to be surrendered by the Series D-2 Purchasers in exchange for Series D-2 Shares and Warrants, all as provided in SECTION 2.02(b).

(j) No issues shall have been raised by Nasdaq with respect to the Notification Form for Listing of Additional Shares filed pursuant to SECTION 5.03(d) which remain unresolved.

ARTICLE 8
SURVIVAL; INDEMNIFICATION

Section 8.01 SURVIVAL. All of the representations and warranties of the Company and the Purchasers contained in this Agreement and in the other Transaction Documents shall survive the execution and delivery hereof and thereof and the issuance, sale and delivery of the Securities, and shall remain in full force and effect until the date which is thirty (30) days after the date upon which the Company's Annual Report on Form 10-K for the fiscal year ending

June 30, 2004 has been filed with the Commission (the "SURVIVAL DATE"). All covenants and agreements of the Company and the Purchasers contained in this Agreement and in the other Transaction Documents shall survive the execution and delivery hereof and thereof and the issuance, sale and delivery of the Securities, and shall remain in full force and effect in accordance with their respective terms. Without limiting the generality of the foregoing, with respect to a breach of any representation or warranty for which notice is given prior to 5:00 p.m., New York City time, on the Survival Date, the indemnification obligation set forth in SECTION 8.02 below shall survive the Survival Date until the claim identified in the notice is finally resolved.

Section 8.02 INDEMNIFICATION.

(a) Subject to SECTION 8.03, from and after the Closing Date, the Company agrees to indemnify, defend and hold harmless, each Purchaser and its Affiliates from and against any and all losses, claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees and disbursements and other expenses incurred in connection with investigating, preparing, settling or defending any action, claim or proceeding (each a "PROCEEDING"), pending or threatened, and the costs of enforcement thereof (collectively, "LOSSES"), which such Person may suffer or become subject to as a result of (i) any misstatement in any representation or warranty, or (ii) any breach of any covenant or agreement, made by, or to be performed on the part of, the Company under this Agreement or any other Transaction Document, and in each case to reimburse any such Person for all such Losses as they are incurred by such Person.

(b) Subject to SECTION 8.03, each Purchaser, severally as to itself and no other Purchaser, hereby agrees to indemnify, defend and hold harmless, the Company and its Affiliates (which term shall not include any Purchaser for the purposes of this Section 8.02(b)) from and

against any and all Losses which such Person may suffer or become subject to as a result of (i) any misstatement in any representation or warranty made by, or (ii) any breach of any covenant or agreement to be performed on the part of, such Purchaser under this Agreement or any other Transaction Document, and in each case to reimburse any such Person for all such Losses as they are incurred by such Person.

(c) Promptly after receipt by any Person (the "INDEMNIFIED PERSON") of notice of any demand, claim or event which would, or would reasonably be expected to, give rise to a claim or the commencement of any Suit in respect of which indemnity may be sought pursuant to SECTION 8.02(a) or (b), such Indemnified Person shall give notice thereof to the Person against whom such indemnity may be sought (the "INDEMNIFYING PERSON") and the Company will deliver a copy of such notice to each Purchaser. Notwithstanding the foregoing, the failure so to give prompt notice to the Indemnifying Person will not relieve such Indemnifying Person from liability, except to the extent such failure or delay materially prejudices such Indemnifying Person. The Indemnifying Person may participate in and, to the extent that it shall elect by written notice delivered to the Indemnified Person promptly after receiving such notice from the Indemnified Person, shall be entitled to control the defense of any such Suit at its own expense with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Person to such Indemnified Person of its election to control the defense thereof, such Indemnifying Person shall not be liable to such Indemnified Person for any legal expenses subsequently incurred by such Indemnified Person in connection with the defense thereof, PROVIDED, HOWEVER, that if the named parties in any Suit (including any impleaded parties) include both such Indemnified Person and such Indemnifying Person and there exists or shall exist a conflict of interest that would make it inappropriate, in the opinion of counsel to the Indemnified Person, for the same counsel to represent both such Indemnified Person and such Indemnifying Person

or any affiliate or associate thereof, the Indemnified Person shall be entitled to retain its own counsel at the expense of such Indemnifying Person; PROVIDED, HOWEVER, that no Indemnifying Person shall be responsible for the fees and expenses of more than one separate counsel for all Indemnified Persons, it being understood that if any stockholder of the Company that is an Affiliate of Advent or one of such stockholders' Affiliates is an Indemnified Person, then Advent shall select any such separate law firm (and local counsel) which may be counsel to Advent or such Affiliates in other unrelated matters. The Indemnifying Person shall not be liable under this SECTION 8.02 for the settlement of any claim or Suit in respect of which indemnity may be sought hereunder if such settlement was effected without its consent (which consent will not be unreasonably denied, withheld or delayed).

(d) All amounts payable under subsections (a) or (b) of this SECTION 8.02 shall be treated for all Tax purposes as adjustments to the purchase price for the Securities, except as otherwise required by law.

Section 8.03 LIMITATIONS ON INDEMNIFICATION.

(a) Subject to SECTION 8.03(b), (i) the Company shall not have liability to the Series D-1 Purchasers under Section 8.02(a)(I) until the aggregate amount of Losses theretofore incurred under SECTION 8.02(a)(I) by the Series D-1 Purchasers and their Affiliates exceeds One Million Dollars ($1,000,000) (the "SERIES D-1 LOSS THRESHOLD"), in which case the Purchasers and their Affiliates shall be entitled to all Losses they have incurred (including all Losses under

the Series D-1 Loss Threshold); and (ii) the Company shall not have liability to the Series D-2 Purchasers under Section 8.02(a)(i) until the aggregate amount of Losses theretofore incurred under Section 8.02(a)(i) by the Series D-2 Purchasers and their Affiliates exceeds Two Hundred Ten Thousand Dollars ($210,000) (the "SERIES D-2 LOSS THRESHOLD," and together with the Series D-1 Loss Threshold, the "LOSS THRESHOLD"), in which case the Series D-2 Purchasers and their Affiliates shall be entitled to all Losses they have incurred (including all Losses under the Series D-2 Loss Threshold).

(b) No Series D-1 Purchaser shall have any liability under Section 8.02(b) as a result of any misstatement in any representation or warranty until the aggregate amount of Losses theretofore incurred under Section 8.02(b) by the Company and its Affiliates exceeds the Series D-1 Loss Threshold, in which case the Company and its Affiliates shall be entitled to all Losses they have incurred (including all Losses under the Series D-1 Loss Threshold)

(c) No Series D-2 Purchaser shall have any liability under Section 8.02(b) as a result of any misstatement in any representation or warranty until the aggregate amount of Losses theretofore incurred under Section 8.02(b) by the Company and its Affiliates exceeds the Series D-2 Loss Threshold, in which case the Company and its Affiliates shall be entitled to all Losses they have incurred (including all Losses under the Series D-2 Loss Threshold).

ARTICLE 9
MISCELLANEOUS

Section 9.01 NOTICES. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party at its address or facsimile number set forth on the signature page hereof, or such other address or facsimile number as such party may hereinafter specify for the purpose of this Section to the party giving such notice. Each such notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified on the signature pages of this Agreement and electronic confirmation of the transmission of such facsimile is received or,

(b) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or, (c) if given by any other means, when delivered at the address specified on the signature pages of this Agreement.

Section 9.02 AMENDMENTS AND WAIVERS.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by the Company and each Purchaser, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.03 EXPENSES; DOCUMENTARY TAXES.

(a) Except as expressly set forth in this Agreement or any other Transaction Document, the Company and each Purchaser will each pay its own costs and expenses in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby or thereby.

(b) The Company agrees to pay, promptly after the presentation of invoices summarizing the work performed and supporting documentation, the out-of-pocket expenses incurred by Advent or the Series D-1 Purchasers for the reasonable fees and disbursements of Pepper Hamilton LLP, PricewaterhouseCoopers LLP and UBS Warburg LLC in connection with the due diligence investigation, and the preparation and negotiation of this Agreement and the other Transaction Documents (and the documents and instruments executed in connection herewith and therewith), and the transactions contemplated hereby and thereby (including the issuance and sale of the Securities, the repurchase of Series B Preferred Stock, the preparation of the Proxy Statement and the holding of the Special Meeting), and any other reasonable third party costs and expenses incurred by the Series D-1 Purchasers in connection with such transactions, including customary post-closing matters (the "EXPENSE REIMBURSEMENT AMOUNT"); PROVIDED, HOWEVER, that, if this Agreement is terminated by the Company pursuant to SECTION 9.04(a)(VII) as a result of a breach by a Series D-1 Purchaser or the Closing does not otherwise occur as a result of a breach by any Series D-1 Purchaser of its obligations under this Agreement, the Company shall not be required to pay the Expense Reimbursement Amount pursuant to this SECTION 9.03(b); and PROVIDED, FURTHER, in no event shall the Expense Reimbursement Amount exceed $1,850,000. In the event a Trigger Event occurs, the Expense Reimbursement Amount shall be paid not later than two (2) Business Days following the date of the Trigger Event. In addition, should the Closing occur, the Company agrees to pay any and all reasonable out-of-pocket expenses (including fees and disbursements of counsel) incurred by Advent, any Series D-1 Purchaser (or any of its assignees) in connection with any amendment, waiver, consent or enforcement hereof or thereof.

(c) In the event this Agreement is terminated (x) by a Series D-1 Purchaser pursuant to SECTION 9.04(a)(IV), (VI) or (viii)(II), (y) by the Company pursuant to SECTION 9.04(a)(VIII) or (IX), or (z) by a Series D-2 Purchaser pursuant to Section 9.04(a)(v) unless the basis for such termination is a breach or a failure to fulfill an obligation by the Series D-1 Purchasers, then in such case (such case of termination being referred to as a "TRIGGER EVENT"), but, except as provided in subsection (d) below, in no event later than five (5) Business Days following the Trigger Event, the Company shall pay to Advent, as agent for

the Series D-1 Purchasers, by wire transfer of immediately available funds an amount equal to the difference between (A) Three Million Dollars ($3,000,000), MINUS (B) any amounts payable by the Company to the Series D-1 Purchasers under SECTION 9.03(b) in respect of the Expense Reimbursement Amount (the "TERMINATION FEE").

(d) Notwithstanding anything in this SECTION 9.03 to the contrary, upon a Trigger Event, and provided the Expense Reimbursement Amount is timely paid in accordance with SECTION 9.03(b), the Company may elect to pay the Termination Fee due under SECTION 9.03(c) to Advent or its designee in shares of Common Stock, in which case the Termination Fee shall be increased by $50,000 (the "STOCK TERMINATION FEE"). If the Company elects to pay the

Stock Termination Fee, the Company shall provide Advent with notice of its election to pay the Stock Termination Fee within five Business Days after the Trigger Event. Within ten Business Days after the Trigger Event, the Company shall file a resale registration statement for an offering to be made on a continuous basis under Rule 415 of the Securities Act covering the shares of Common Stock issued to Advent or its designee as payment of the Stock Termination Fee; PROVIDED, HOWEVER, such filing may be extended for up to 90 days (i) as provided in Section 2.5(c) in the Investor Rights Agreement as a result of an Adverse Disclosure or (ii) as reasonably determined to be necessary by the Board of Directors of the Company to implement the transactions contemplated by a Superior Proposal, whichever is shorter (the date of filing, the "FILING DATE"). The shares constituting payment of the Stock Termination Fee shall be delivered to Advent or its designee on the Business Day immediately preceding the Filing Date (the date of delivery being the "PAYMENT DATE"). The number of shares of Common Stock to be issued to Advent or its designee in payment of the Stock Termination Fee shall be determined by dividing (x) the sum of the dollar amount of the Termination Fee plus $50,000 by (y) the arithmetic average of the Average Daily Trading Price (as defined in the Certificate of Designations) of the Common Stock for the five Trading Days (as defined in the Certificate of Designations) ending five Trading Days prior to the Payment Date. The Company shall use all commercially reasonable efforts to cause the registration statement covering the shares of Common Stock issued in payment of the Stock Termination Fee to become effective as soon as practicable and to remain continuously effective for 45 days. The Company shall effect such registration in accordance with Sections 2.5(a) and (b) and 2.7 of the Investor Rights Agreement and the selling stockholders in such registration will comply with Sections 2.7 and 2.9 of the Investor Rights Agreement.

(e) The Company agrees to pay upon the earlier of the Closing or termination of this Agreement and the receipt of invoices reasonably satisfactory to the Company the out-of-pocket expenses incurred by the Series D-2 Purchasers for the reasonable fees and disbursements of Proskauer Rose LLP in connection with the preparation and negotiation of this Agreement and certain other Transaction Documents; PROVIDED, HOWEVER, that in no event shall the aggregate amount reimbursed under this SECTION 9.03(e) exceed $100,000; PROVIDED, FURTHER, that, if this Agreement is terminated (i) by the Company or the Series D-1 Purchasers pursuant to SECTIONS 9.04(a)(II), 9.04(a)(IV) or 9.04(a)(VIII) as a result of a breach or a failure to fulfill an obligation by a Series D-2 Purchaser, or (ii) the Series B Agreement is terminated by the Company pursuant to Section 7.04(a)(iv) thereof as a result of a breach or a failure to fulfill an obligation by a Series D-2 Purchaser or Holder, then the Company shall not be required to pay such amount pursuant to this SECTION 9.03(e).

(f) In addition to the amounts set forth in SECTION 9.03(e), the Company agrees to pay, or reimburse the Series D-2 Purchasers upon the earlier of the Closing or termination of this Agreement and the receipt of invoices reasonable

satisfactory to the Company for any and all expenses, costs, fees, disbursements and charges incurred or borne by the Series D-2 Purchasers in connection with any filing required by SECTION 6.02, or any actions taken by the Series D-2 Purchasers in connection with the FTC Investigation at the request of the Company or any governmental authority, including, the reasonable legal fees of counsel incurred in connection therewith. The payment of such expenses and fees by the Company shall be in addition to, and not limitation of, its reimbursement obligation under SECTION 9.03(e); PROVIDED,

HOWEVER, that, if this Agreement or the Series B Agreement is terminated for the reasons contemplated in the second proviso in SECTION 9.03(e) above, the Company shall not be required to pay the amounts contemplated by this SECTION 9.03(f).

(g) The Company agrees to pay any and all stamp, transfer and other similar taxes payable or determined to be payable in connection with the execution and delivery of this Agreement and the issuance of the Securities and all Underlying Shares.

(h) All filing fees relating to or arising out of the filings under the HSR Act by the Series D-1 Purchasers with respect to the transactions contemplated by this Agreement shall be paid by the Series D-1 Purchasers, and shall be subject to the expense reimbursement provided for in this SECTION 9.03.

Section 9.04 TERMINATION.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual written agreement of the Company and Advent;

(ii) by the Company, the Series D-1 Purchasers or the Series D-2 Purchasers if the Closing shall not have been consummated on or before the Termination Date (PROVIDED that the right to terminate this Agreement under this SECTION 9.04(a)(II) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been a principal cause of or resulted in the failure of the Closing to occur on or before the Termination Date);

(iii) by the Company or the Series D-1 Purchasers if the Company's stockholders fail to approve the issuance and sale of the Securities or the Charter Amendment at the Special Meeting contemplated by the Agreement;

(iv) by the Series D-1 Purchasers if the Company or any of the Series D-2 Purchasers shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement such that the condition set forth in SECTION 7.01(b) (with respect to such a breach by the Company) or SECTION 7.02(b) (with respect to such a breach by the Series D-2 Purchasers) is not satisfied, which breach is not cured to the reasonable satisfaction of the Series D-1 Purchasers within fifteen (15) days after notice thereof is received by the Company or by the Termination Date, whichever is earlier;

(v) by the Series D-2 Purchasers if the Company or any of the Series D-1 Purchasers shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement such that the condition set forth in Section 7.01(b) (with respect to such a breach by the Company) or Section 7.02(b) (with respect to such a breach by the Series D-1 Purchasers) is not satisfied, which breach is not cured to the reasonable satisfaction of the Series D-2 Purchasers within fifteen (15) days after notice thereof is received by the Company or by the Termination Date, whichever is earlier;

(vi) by any Purchaser in the event that (a) the Board shall have failed to recommend adoption and approval of the issuance of the Securities in the Proxy Statement as contemplated by this Agreement or the Board shall have withdrawn or modified in a manner adverse to the Purchasers such recommendation; (b) the Board shall have recommended to the stockholders of the Company an Alternative Transaction; or (c) an Alternative Transaction shall have been announced or otherwise publicly known and the Board shall have either not recommended against acceptance of such Alternative Transaction by its stockholders or not reaffirmed its recommendation for the transaction contemplated by this Agreement, in either case, within ten (10) Business Days of the date the Alternative Transaction first becomes publicly known;

(vii) by the Company if any Series D-1 Purchaser shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which, in any case, (A) would cause the condition set forth in SECTION 7.02(b) not to be satisfied and (B) is not cured to the reasonable satisfaction of the Company within fifteen (15) days after notice thereof is received by such Purchaser or by the Termination Date, whichever is earlier;

(viii) (I) by the Company if any Series D-2 Purchaser shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which, in any case, (A) would cause the condition set forth in SECTION 7.02(b) not to be satisfied and (B) is not cured to the reasonable satisfaction of the Company within fifteen (15) days after notice thereof is received by such Purchaser or by the Termination Date, whichever is earlier, or (II) by the Company or any Series D-1 Purchaser if the Company has the right to terminate the Series B Agreement pursuant to Section 7.04(a)(iv) thereof;

(ix) by the Company in order to enter into an agreement relating to a Superior Proposal; PROVIDED that the Company has complied with SECTION 5.08(d) with respect to such Superior Proposal; or

(x) by the Company or any Purchaser if there shall be enacted any law or regulation, if any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction is issued, or if any Suit is filed, in any case which makes consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof illegal or otherwise permanently prohibited.

(b) If this Agreement is terminated as permitted by SECTION 9.04(a), such termination shall be without liability of any party (or any Affiliate of such party) to the other parties to this Agreement; PROVIDED that if such termination shall result from the (i) failure of any party to perform any covenant or agreement contained in this Agreement or (ii) subject to SECTION 5.10, breach by any party of any of its representations or warranties contained herein, then, subject to SECTION 8.03(b), such party shall be fully liable for any and all damages incurred or suffered by the other parties as a result of such failure or breach.

(c) Any party to this Agreement providing a notice of termination to any other party to this Agreement pursuant to Section 9.04(a) hereof shall simultaneously provide such notice to all other parties hereto.

(d) The provisions of this Article 9 shall survive the termination of this Agreement.

Section 9.05 SUCCESSORS AND ASSIGNS.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party. Notwithstanding the foregoing (i) any Purchaser may assign or transfer, in whole or, from time to time, in part, the right to purchase all or any portion of the Securities to one or more of its Affiliates or, in the case of the Series D-1 Purchasers, to one or more limited partners of the Series D-1 Purchasers who have pre-existing contractual co-investment rights with the assigning Series D-1 Purchaser, (ii) subject to the terms and conditions of the Investor Rights Agreement, from and after the Closing Date, any Purchaser or other holder of Securities may assign, pledge or otherwise transfer, in whole or from time to time in part, its rights hereunder to any Person who acquires any interest in any Securities and (iii) any Purchaser may assign or transfer any of its rights or obligations under this Agreement, in whole or, from time to time, in part to the Company or any other Purchaser or Affiliate of such Purchaser. As a condition of any transfer pursuant to this SECTION 9.05, the transferee must agree in writing for the benefit of all parties to this Agreement (which writing shall be in form and substance reasonably acceptable to all parties to this Agreement) to be bound by the terms and conditions of this Agreement and all other Transaction Documents with respect to any Securities being transferred hereunder.

(b) Notwithstanding anything herein to the contrary, this Agreement shall in no manner restrict in any way the ability of any Series D-2 Purchaser to sell, assign, transfer, pledge or otherwise encumber or dispose of any of its shares of Series B Preferred Stock; provided that, it shall be a condition of any such transfer that the transferee be an Affiliate of such Series D-2 Purchaser and that the transferee agree in writing for the benefit of all parties to this Agreement (which writing shall be in form and substance reasonably acceptable to all parties to this Agreement) to be bound by the terms and conditions of this Agreement and all other Transaction Documents with respect to any shares of Series B Preferred Stock being acquired hereunder.

Section 9.06 GOVERNING LAW; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE STATE OF DELAWARE, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING

IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

Section 9.07 COUNTERPARTS; FACSIMILE SIGNATURES; EFFECTIVENESS. This Agreement may be executed in any number of counterparts (including facsimile signature) each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement

shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. No provision of this Agreement (other than Section 8.02) is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder, except to the extent certain provisions hereof expressly convey certain rights and authorities to Advent, which the Purchasers hereby authorize to act on their behalf in all such respects.

Section 9.08 ENTIRE AGREEMENT. This Agreement and the other Transaction Documents constitute the entire agreement and understanding between the parties hereto and supersede any and all prior agreements and understandings, written or oral, relating to the subject matter of the Transaction Documents, except that the terms and provisions of (a) the Confidentiality and Non-Disclosure Agreement dated December 10, 2002 between Advent and the Company, as amended to date, shall remain in full force and effect.

Section 9.09 HEADINGS. The headings in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first above written.

ASPEN TECHNOLOGY, INC.

By: /s/ David L. McQuillin

Name: David L. McQuillin
Title: President and Chief Executive Officer

Address for notices:

Aspen Technology, Inc.
Ten Canal Park
Cambridge, Massachusetts 02141
Attention: Chief Financial Officer and General Counsel
Facsimile: 617.949.1717

with a copy to:

Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
Attention: Mark L. Johnson
Facsimile: 617.526.5000

[PURCHASER SIGNATURE PAGES FOLLOW]

SERIES D-1 PURCHASERS:

ADVENT ENERGY II LIMITED PARTNERSHIP
ADVENT PGGM GLOBAL LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-A LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-B LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-C LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-D C.V.

DIGITAL MEDIA & COMMUNICATIONS III-E C.V.

GLOBAL PRIVATE EQUITY III LIMITED PARTNERSHIP

GLOBAL PRIVATE EQUITY IV LIMITED PARTNERSHIP

GPE IV CPP INVESTMENT BOARD CO-INVESTMENT LIMITED PARTNERSHIP

By: Advent International Limited Partnership,
General Partner

By: Advent International Corporation, General
Partner

By: /s/ Douglas A. Kingsley

Senior Vice President

ADDRESS FOR NOTICES:

c/o Advent International Corporation
75 State Street
Boston, MA 02109
Attention: Douglas A. Kingsley,
Managing Director
Facsimile: 617.951.0568

WITH A COPY TO:

Pepper, Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pennsylvania 19103
Attention: Julia D. Corelli
Facsimile: 215.981.4750

ADVENT PARTNERS (NA) GPE III LIMITED PARTNERSHIP

ADVENT PARTNERS DMC III LIMITED PARTNERSHIP

ADVENT PARTNERS GPE-III LIMITED PARTNERSHIP

ADVENT PARTNERS GPE-IV LIMITED PARTNERSHIP

ADVENT PARTNERS II LIMITED PARTNERSHIP

By: Advent International Corporation, General Partner

By: /s/ Douglas A. Kingsley

Senior Vice President

ADDRESS FOR NOTICES:

c/o Advent International Corporation
75 State Street
Boston, MA 02109
Attention: Douglas A. Kingsley,
Managing Director
Facsimile: 617.951.0568

WITH A COPY TO:

Pepper, Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pennsylvania 19103
Attention: Julia D. Corelli
Facsimile: 215.981.4750

SERIES D-2 PURCHASERS:

PINE RIDGE FINANCIAL INC.

By: /s/ Avi Vigder

Name: Avi Vigder
Title: Authorized Signatory

ADDRESS FOR NOTICES:

Pine Ridge Financial Inc.
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022
Facsimile No.: (212) 651-9010
Telephone No.: (212) 651-9000
Attn: Avi Vigder

WITH A COPY TO:

Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299
Facsimile No.: (212) 969-2900
Telephone No.: (212) 969-3000
Attn: Adam J. Kansler, Esq.

SMITHFIELD FIDUCIARY LLC

By: /s/ Adam J. Chill

Name: Adam J. Chill
Title: Authorized Signatory

ADDRESS FOR NOTICE:

Smithfield Fiduciary LLC
c/o Highbridge Capital Management, LLC
9 West 57th Street, 27th Floor
New York, New York 10019
Facsimile No.:(212) 751-0755
Telephone No.:(212) 287-4720
Attn: Ari J. Storch / Adam J. Chill

WITH A COPY TO:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Office: (212) 756-2376
Fax: (212) 593-5955
Attn: Eleazer Klein, Esq.

SCHEDULE 2.01 - PURCHASERS

SERIES D-1 PURCHASERS:

Advent Energy II Limited Partnership

Advent PGGM Global Limited Partnership

Digital Media & Communications III Limited Partnership

Digital Media & Communications III-A Limited Partnership

Digital Media & Communications III-B Limited Partnership

Digital Media & Communications III-C Limited Partnership

Digital Media & Communications III-D C.V.

Digital Media & Communications III-E C.V.

Global Private Equity III Limited Partnership

Global Private Equity IV Limited Partnership

GPE IV CPP Investment Board Co-Investment Limited Partnership

Advent Partners (NA) GPE III Limited Partnership

Advent Partners DMC III Limited Partnership

Advent Partners GPE-III Limited Partnership

Advent Partners GPE-IV Limited Partnership

Advent Partners II Limited Partnership

SERIES D-2 PURCHASERS:

	SERIES B SHARES TO BE EXCHANGED		SERIES D-2 SHARES TO BE RECEIVED	SHARES OF COMMON STOCK UNDERLYING WARRANTS TO BE RECEIVED
	SERIES B-I PREFERRED STOCK	SERIES B-II PREFERRED STOCK		
Pine Ridge Financial, Inc	8,094	4,259	31,532	630,640
Smithfield Fiduciary LLC	8,824	3,529	31,532	630,640
TOTAL	16,918	7,788	63,064	1,261,280

ANNEX I

List of Stockholders Subject to Voting Rights Agreements

Pine Ridge Financial, Inc.
Smithfield Fiduciary LLC
Perseverance LLC

Lawrence B. Evans
David L. McQuillin
Lisa W. Zappala
Douglas R. Brown
Stephen J. Doyle
Greasham T. Brebach, Jr.
Joan C. McArdle
Stephen L. Brown
Stephen M. Jennings

ANNEX II

List of Existing Registration Rights Agreements

Registration Rights Agreement dated as of February 8, 2002 between Aspen Technology, Inc. and Accenture LLP

Amended and Restated Registration Rights Agreement dated as of March 19, 2002 between Aspen Technology, Inc. and the Purchasers named therein

Amended and Restated Registration Rights Agreement dated as of June 5, 2002 between Aspen Technology, Inc. and the Purchasers named therein

Exhibit 99.2

EXECUTION COPY

REPURCHASE AND EXCHANGE AGREEMENT

by and among

ASPEN TECHNOLOGY, INC.

and

the HOLDERS named herein

Dated as of June 1, 2003

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

REPURCHASE AND EXCHANGE AGREEMENT

This REPURCHASE AND EXCHANGE Agreement (this "AGREEMENT"), dated as of June 1, 2003, is by and among Aspen Technology, Inc., a Delaware corporation (the "COMPANY"), and the securityholders of the Company identified on SCHEDULE A (each, a "HOLDER," and collectively, the "HOLDERS").

BACKGROUND

A. The Holders are holders of (i) shares of Series B-I Convertible Preferred Stock, par value $0.10 per share, of the Company (the "SERIES B-I PREFERRED STOCK") and Series B-II Convertible Preferred Stock, par value $0.10 per share, of the Company (the "SERIES B-II PREFERRED STOCK" and, together with the Series B-I Preferred Stock, the "SERIES B PREFERRED STOCK"), as identified with respect to each Holder on SCHEDULE B, and (ii) certain warrants (as amended, each an "EXISTING WARRANT") to acquire shares of Common Stock, par value $0.10 per share, of the Company (the "COMMON STOCK"), as identified with respect to each Holder on SCHEDULE C.

B. Contemporaneously herewith, the Company is entering into the Securities Purchase Agreement, dated as of even date herewith, by and among the Company and the several purchasers named on Schedule 2.01 thereto (as it may be amended hereafter, the "SERIES D AGREEMENT"), providing for, among other things, the issuance by the Company of shares of Series D-2 Convertible Preferred Stock, par value $0.10 per share, of the Company (the "SERIES D-2 PREFERRED STOCK") and warrants to purchase Common Stock of the Company ("Series D Warrants") to the Holders in exchange for a portion of the shares of Series B Preferred Stock held by each Holder.

C. Contemporaneously with the completion of the transactions contemplated by the Series D Agreement (the "SERIES D CLOSING"), (i) the Company desires to repurchase all of the shares of Series B Preferred Stock held by each Holder that are not exchanged for shares of Series D-2 Preferred Stock and Series D Warrants pursuant to the Series D Agreement (such shares of Series B Preferred Stock, the "REPURCHASED SHARES") from the Holders for cash as more fully set forth in SCHEDULE D, and the Holders desire to so sell the Repurchased Shares to the Company, and (ii) the Company and the Holders desire to exchange the Existing Warrants for certain newly issued warrants to acquire shares of Common Stock, in each case as further described in, and on the terms and conditions of, this Agreement.

D. The Company and the Holders further desire to provide for (i) certain additional rights of the Holders in consideration for entering into this Agreement, (ii) an understanding effective for the periods described herein regarding certain of the Company's and the Holders' rights under the Certificate of Designations filed by the Company with the Secretary of State of the State of

Delaware on March 19, 2002, setting forth the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions of the Series B Preferred Stock (the "SERIES B CERTIFICATE OF DESIGNATIONS"), (iii) certain representations, warranties and covenants of the Company and the Holders with respect to the transactions contemplated by this Agreement, and (iv) certain other matters set forth herein, in each case as further described in, and on the terms and conditions of, this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS; PRINCIPLES OF INTERPRETATION

Section 1.01 DEFINITIONS.

(a) Capitalized terms used in this Agreement without definition shall have the respective meanings given them in the Series D Agreement.

(b) The following terms, as used herein, have the following meanings:

"AMENDMENT AND TERMINATION AGREEMENT" means the Amendment and Termination Agreement, substantially in the form of EXHIBIT C, by and among the Company and the Holders terminating certain rights under the Series B Purchase Agreement and the related Amended and Restated Registration Rights Agreement.

"CONFIDENTIALITY AGREEMENT" means each of (i) the letter agreement, dated April 29, 2003, between the Company and Cavallo Capital Corp., and (ii) the letter agreement, dated April 29, 2003, between the Company and Highbridge Capital Management LLC.

"EQUITY CONDITIONS" has the meaning given it in the Series B Certificate of Designations.

"NEW WARRANT" means each of the warrants to acquire shares of Common Stock, in the form of EXHIBIT A, to be issued to the Holders hereunder in exchange for the Existing Warrants pursuant to Section 2.02(b).

"REDEMPTION NOTICE" has the meaning given it in the Series B Certificate of Designations.

"REDEMPTION PRICE" has the meaning given it in the Series B Certificate of Designations.

"REGISTRATION RIGHTS AGREEMENT" means the Amended and Restated Registration Rights Agreement, dated as of March 19, 2002, among the Company and the Holders.

"REPURCHASE PRICE" means, with respect to a Holder, the amount equal to the product of (i) the Per Share Repurchase Price and (ii) the number of Repurchased Shares held by such Holder immediately prior to the Closing.

"SERIES B DOCUMENTS" means this Agreement, the New Warrants, the Amendment and Termination Agreement, and the Series C Notes.

"SERIES B PURCHASE AGREEMENT" means the Amended and Restated Securities Purchase Agreement, dated as of March 19, 2002, among the Company and the Holders.

"SERIES C PREFERRED STOCK" means the Series C Preferred Stock, par value $0.10 per share, of the Company.

"SERIES C NOTES" means a promissory note of the Company in the form of EXHIBIT B.

"STATED VALUE" has the meaning given it in (a) the Series B Certificate of Designations or (b) the Certificate of Designations filed by the Company with the Secretary of State of the State of Delaware on March 19, 2002, setting forth the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions of the Series C Preferred Stock, as the case may be.

"WARRANT SECURITIES" means, collectively, the New Warrants and the Warrant Shares.

"WARRANT SHARES" means the shares of Common Stock which may be acquired by a Holder upon exercise by such Holder of such Holder's New Warrant.

(c) Each of the following terms is defined in the provision hereof identified opposite such term:

TERM	SECTION
8-K Filing	Section 5.02
Agreement	Preamble
Closing	Section 2.01
Common Stock	Background
Company	Preamble
Company Officer Certificate	Section 6.01(b)
Election Date	Section 5.03(a)
Existing Warrants	Background
Expense Reimbursement Amount	Section 7.03(b)
Holder	Preamble
Holder Closing Certificate	Section 6.02(b)
Holder Liens	Section 4.05
Per Share Repurchase Price	Section 2.02(a)
Public Reports	Section 3.06
Repurchased Shares	Background
Series B Certificate of Designations	Background
Series B Preferred Stock	Background
Series B-I Preferred Stock	Background
Series B-II Preferred Stock	Background
Series C Exchange Right	Section 5.03(c)
Series D Agreement	Background
Series D Closing	Background

TERM	SECTION
Series D-2 Preferred Stock	Background
Series D Warrants	Background

Section 1.02 INTERPRETATION AND RULES OF CONSTRUCTION. Definitions contained in this Agreement apply to singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

The terms "includes" and the word "including" and words of similar import shall be deemed to be followed by the words "without limitation." Article, Section and paragraph and Schedule and Exhibit references are to the Articles, Sections and paragraphs of and Schedules and Exhibits to this Agreement unless otherwise specified. The word "or" shall not be exclusive. For purposes of this Agreement, the terms "Company" and "Subsidiary" shall include any entity which is, in whole or in part, a predecessor of the Company or any Subsidiary, unless the context expressly requires otherwise.

ARTICLE II
CLOSING

Section 2.01 CLOSING. The closing of the transactions contemplated by Sections 2.02 and 2.03 (the "Closing") shall take place at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109, contemporaneously with the Series D Closing, or at such other time and place as the Company and the Holders mutually agree upon in writing (the "CLOSING DATE").

Section 2.02 TRANSACTIONS AT THE CLOSING. At the Closing:

(a) The Company shall repurchase from each Holder, and each Holder shall sell to the Company, all of such Holder's Repurchased Shares, including any accrued dividends thereon on the Closing Date, at the price per share of $850.00 plus an amount in cash or Common Stock equal to the accrued dividends on such share through the Closing Date (the "PER SHARE REPURCHASE PRICE"); PROVIDED, HOWEVER, that (x) Common Stock may only be used to pay dividends if (I) all conditions provided in clauses (ii) and (iii) of the definition of "Equity Conditions" contained in the Series B Certificate of Designations are satisfied at such time and (II) such issuance would be permitted without violating the rules or regulations of any Trading Market (as defined in the Series B Certificate of Designations) and (y) if Common Stock is to be used to pay dividends, (i) the Company shall send to the Holders irrevocable notice of the Company's intention to do so at least ten Trading Days prior to the Closing and shall specify the Closing Date, (ii) the total number of shares of Common Stock issuable in payment of accrued dividends shall be calculated as set forth in Section 3(e) of the Series B Certificate of Designations, and two Trading Days prior to the Closing Date shall be for such purposes the "dividend payment date." For purposes of clarity, the aforesaid dividends shall be paid at the Closing by crediting the number of shares of Common Stock to which each Holder shall be entitled for such dividend to such Holder's balance account with The Depository Trust

Corporation through its Deposit Withdrawal Agent Commission System specified in writing to the Company by each Holder prior to the Closing.

(b) Each Holder shall exchange each Existing Warrant held by such Holder for a New Warrant exercisable for the number of shares of Common Stock, and with the expiration date, specified with respect to such New Warrant on SCHEDULE E; and

(c) The Registration Rights Agreement and the effectiveness of Sections 4.7 and 4.12 of the Series B Purchase Agreement shall be amended or terminated, as applicable, by execution and delivery of the Amendment and Termination Agreement by all parties thereto.

Section 2.03 CLOSING DELIVERIES.

(a) At the Closing, the Company shall deliver or cause to be delivered to each Holder the following:

(i) the amount of such Holder's Repurchase Price, in United States dollars and in immediately available funds, by wire transfer to an account designated by such Holder to the Company in writing for such purpose;

(ii) a New Warrant in definitive form and registered in the name of such Holder or an Affiliate of such Holder designated by such Holder to the Company in writing not later than two Business Days prior to the Closing Date, pursuant to which such Holder (or Affiliate) shall have the right to acquire that number of shares of Common Stock, and which shall have the expiration date, set forth opposite such Holder's name on SCHEDULE E;

(iii) the Amendment and Termination Agreement, duly executed by the Company;

(iv) the legal opinion of Company Counsel in the form of EXHIBIT F, executed by such counsel and delivered to the Holders;

(v) the Company Officer Certificate executed by an appropriate officer of the Company; and

(vi) any other documents reasonably requested by the Holders in connection with the Closing.

(b) At the Closing, each Holder shall deliver or cause to be delivered to the Company the following:

(i) one or more stock certificates evidencing all of such Holder's Repurchased Shares, duly endorsed in blank or with stock powers or other instruments of transfer thereof reasonably acceptable to the Company and duly executed by such Holder, for cancellation by the Company, or in lieu of the foregoing, an indemnification undertaking reasonably satisfactory to the Company;

(ii) each Existing Warrant identified with respect to such Holder on SCHEDULE C, together with an instrument of transfer thereof reasonably acceptable to the Company and duly executed by such Holder, for cancellation by the Company, or in lieu of the foregoing, an indemnification undertaking reasonably satisfactory to the Company;

(iii) the Amendment and Termination Agreement, duly executed by such Holder; and

(iv) the Holder Closing Certificate executed by a duly authorized representative of such Holder.

(c) At the Closing, each Holder shall deliver or cause to be delivered to each other Holder the Amendment and Termination Agreement, duly executed by the delivering Holder.

Section 2.04 CONTEMPORANEOUS CLOSINGS. The obligations described in Sections 2.02 and 2.03 above of the Company and each Holder at the Closing shall be satisfied contemporaneously with, and only contemporaneously with, the Series D Closing. The Series D Closing shall occur contemporaneously with, and only contemporaneously with, the Closing hereunder.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter to the Series D Agreement, dated the date of this Agreement (the "DISCLOSURE LETTER"), the Company hereby represents and warrants to the Holders, as of the date hereof and as of the Closing Date, as set forth below. The disclosure letter in the Series D Agreement is arranged in sections corresponding to Sections contained in that Agreement, and the disclosures in any section of that Disclosure Letter shall qualify (i) the sections of this Agreement referencing the Disclosure Letter

section and (ii) all other sections to this Agreement to the extent (notwithstanding the absence of a specific cross reference) that such disclosure reasonably relates to other sections to this Agreement.

Section 3.01 EXISTENCE AND POWER. The Company (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware; (b) has the full corporate power to own, lease and operate its properties and assets and to carry on its business as now conducted; and (c) is duly qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the failure so to qualify would have, or would reasonably be expected to have, a Material Adverse Effect.

Section 3.02 AUTHORIZATION/ENFORCEMENT/VALID ISSUANCE. The execution, delivery and performance by the Company of this Agreement and the other Series B Documents and the consummation by the Company of the transactions contemplated hereby and thereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action on the part of Company. This Agreement and each of the other Series B Documents each constitute, or will constitute upon execution, a valid and binding agreement of the Company,

enforceable against the Company in accordance with their respective terms. Without limiting the foregoing: (w) the Company has full corporate power and authority to execute and deliver the Series C Notes and to perform all of the obligations thereunder, and all necessary corporate action has been taken by the Company in connection therewith, (x) the Series C Notes, upon delivery, will constitute the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with their terms, (y) the New Warrants, when issued in accordance with the terms of this Agreement, (i) will be duly and validly issued, fully paid and nonassessable, (ii) will constitute the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with their terms, (iii) will be free and clear of all Liens, (iv) shall not be subject to preemptive rights or similar rights of stockholders and (v) based in part on the representations of the Holders in this Agreement, shall be issued in compliance with all applicable federal and state securities laws, as presently in effect, and (z) the shares of Common Stock issuable upon exercise of the New Warrants have been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the New Warrants, (i) shall be duly and validly issued, fully paid and nonassessable, (ii) shall be free and clear of all Liens, and (iii) based in part on the representations of the Holders in this Agreement and in the New Warrants (including the required notice of exercise), shall be issued in compliance with all applicable federal and state securities laws, as presently in effect.

Section 3.03 GOVERNMENTAL AUTHORIZATION. The execution, delivery and performance by the Company of this Agreement and each other Series B Documents and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any governmental body, agency or official by the Company other than (a) the filing of the Certificate of Designation and the Charter Amendment with the Secretary of State of Delaware, (b) any filings, authorizations, consents and approvals as may be required under the HSR Act; (c) the filing by the Company with the Commission of such reports and other documents under the Securities Act or the Exchange Act as may be required in connection with this Agreement and the other Series B Documents and the transactions contemplated hereby and thereby to be effected at or prior to the Closing, and filings required to be made pursuant to the rules of Nasdaq; (d) any necessary filings with any state securities commission under state blue sky laws or filings under the Securities Act, the Exchange Act and/or pursuant to Nasdaq rules in connection with a registration of securities pursuant to the Investor Rights Agreement; and (e) filings, notices or novations required with respect to customer contracts with governmental customers. The execution and delivery by the Company of this Agreement and each of the other Series B Documents and the performance by the Company of its obligations set forth in Article V require no action by or in respect of, or filing with any governmental

body agency or official by the Company (other than as specifically contemplated by Article V).

Section 3.04 NONCONTRAVENTION. The execution, delivery and performance by the Company of this Agreement and each other Series B Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate the certificate of incorporation or bylaws of the Company, (b) violate the certificate of incorporation, bylaws, operating, limited liability or partnership agreement of any Subsidiary, (c) violate any material law, rule, regulation, judgment, injunction, order or decree applicable to the Company or any Subsidiary, (d) except as contemplated by Section 3.03 (other than SECTION 3.03(e)) or as otherwise disclosed on SCHEDULE 3.04 of the Disclosure Letter, require any consent or other action by any Person under, constitute a default under, or give rise to termination, cancellation or

acceleration of any right or obligation of the Company or any Subsidiary or to a loss of any benefit to which the Company or any Subsidiary is entitled under, and are not inconsistent with, any provision of any Material Contract binding upon the Company or any Subsidiary, in each case in a manner that would individually or in the aggregate have a Material Adverse Effect, or (e) result in the creation or imposition of any Lien on any material asset of the Company or any Subsidiary. Except for the consent of Silicon Valley Bank (which has been obtained), the execution, delivery and performance by the Company of this Agreement and each other Series B Documents and the consummation of the transactions contemplated by Article V hereof do not and will not require any consent or other action by any Person under, constitute a default under, or give rise to termination, cancellation or acceleration of any right or obligation of the Company or any Subsidiary or to a loss of any benefit to which the Company or any Subsidiary is entitled under, and are not inconsistent with, any provision of any Material Contract binding upon the Company or any Subsidiary, in each case in a manner that would individually or in the aggregate have a Material Adverse Effect.

Section 3.05 FINDERS' FEES. Other than for the fees and disbursements in the amounts and to the entities described in SCHEDULE 3.21 of the Disclosure Letter (all of which shall be paid by the Company) and except for the fees and expenses of the Purchasers to be paid by the Company pursuant to the terms of the Series D Agreement, no investment banker, broker, finder or other intermediary has been retained by or is authorized to act on behalf of the Company or any Subsidiary who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement and the other Series B Documents.

Section 3.06 PUBLIC REPORTS; FINANCIAL STATEMENTS.

(a) Since July 1, 2002, the Company has filed with the Commission all forms, reports, schedules, proxy statements (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein and including all registration statements and prospectuses filed with the Commission, the "PUBLIC REPORTS") required to be filed by the Company with the Commission. As of its date of filing, except to the extent otherwise disclosed in subsequently filed Public Reports, each Public Report complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and the rules and regulations promulgated thereunder and, except to the extent revised or superseded by a subsequent filing with the Commission prior to the date hereof, none of such Public Reports (including any and all financial statements included therein) when filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein not misleading, in light of the circumstances under which they were made.

(b) Except to the extent otherwise disclosed in Public Reports, each

of the consolidated financial statements (including the notes thereto) included in the Public Reports complied as to form in all material respects, as of its date of filing with the Commission, with applicable accounting requirements and the published rules and regulations of the Commission with respect thereto, was prepared in accordance with GAAP (except as may otherwise be indicated in the notes thereto) and fairly presents in all material respects the consolidated financial position of Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the

case of unaudited financial statements, to (i) normal year-end adjustments, (ii) the absence of footnote disclosure required to be included in audited financial statements and (iii) as otherwise permitted by the Commission on Form 10-Q under the Exchange Act, which collectively were not or are not expected to be in the aggregate material).

(c) The information set forth in Schedule 3.07(c) of the Disclosure Letter is true and accurate.

Section 3.07 ABSENCE OF CERTAIN CHANGES SINCE BALANCE SHEET DATE. The Company and the Subsidiaries have conducted their businesses since the Balance Sheet Date in the ordinary course. Without limiting the generality of the foregoing, since the Balance Sheet Date, except as disclosed in SCHEDULE 3.08 of the Disclosure Letter, there has not been any:

(a) event or series of related events which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect;

(b) notice, whether written or oral, received by the Company from any staff member of the FTC or other FTC personnel regarding the FTC Investigation that the Bureau of Competition, or office of comparable authority, of the FTC has made, or has concluded that it will make, a recommendation to the Commissioners of the FTC that the Company or any Subsidiary will be required to take any action, or that the FTC intends to initiate litigation against the Company or any Subsidiary, in each case, which would, or would reasonably be expected to, result in the Company's inability to satisfy the conditions set forth in SECTION 7.01(h) of the Series D Agreement;

(c) declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company (other than dividends on the Series B Preferred Stock paid in shares of Common Stock), or any repurchase, redemption or other acquisition by the Company or any Subsidiary of any outstanding shares of capital stock or other securities of the Company or any Subsidiary;

(d) incurrence, assumption or guarantee by the Company or any Subsidiary of any Indebtedness, other than in the ordinary course of business, consistent with past practices and which, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(e) creation or other incurrence by the Company or any Subsidiary of any Lien on any material asset other than in the ordinary course of business consistent with past practices;

(f) making of any loan, advance or capital contributions to or investment by the Company or any Subsidiary in any Person, other than (i) loans, advances or capital contributions to or investments in wholly-owned Subsidiaries and (ii) loans to employees to advance reasonable and customary expenses to be incurred by them in the performance of their duties on behalf of the Company or any Subsidiary, in each case made in the ordinary course of business consistent with past practices;

(g) acquisition, disposition or similar transaction by the Company or any Subsidiary involving any material assets, properties or liabilities (other than sales of inventory in

the ordinary course of business consistent with past practices), whether by merger, purchase or sale of stock, purchase or sale of assets or otherwise;

(h) damage, destruction or other casualty loss (whether or not covered by insurance) which has not had, or would reasonably be expected to have, a Material Adverse Effect;

(i) Tax election or change in any method of accounting or accounting practice by the Company or any Subsidiary, except for any such change after the date hereof required by reason of a concurrent change in U.S. generally accepted accounting principles;

(j) resignation or, except as approved by the Board, any termination or removal of any Executive Officers;

(k) increase in the compensation of, or Employee Benefits made available to, any of the Executive Officers or in the rate of pay or Employee Benefits of any of its employees, except as part of regular compensation increases in the ordinary course consistent with past practices;

(l) labor dispute, other than routine individual grievances, or written notice of any, or, to the Company's Knowledge, any threatened, activity or proceeding by a labor union or representative thereof to organize any employees of the Company or any Subsidiary, which employees were not subject to a collective bargaining agreement at the Balance Sheet Date, or any lockouts, strikes, slowdowns, or work stoppages by or with respect to any employees of the Company or any Subsidiary, nor, to the Company's Knowledge, has any Person threatened to initiate any such activity;

(m) Material Contract (other than the Transaction Documents) entered into, or any relinquishment or waiver by the Company or any Subsidiary of any material right under any Material Contract, and none of the Company or any of its Subsidiaries has taken or omitted to take, and, to the Company's Knowledge, no third party has taken or omitted to take, any action that constitutes, or would with the passage of time constitute, a default under any Material Contract; or

(n) (i) "plant closing" (as defined in the WARN Act), or (ii) "mass layoff" (as defined in the WARN Act); nor has the Company or any of the Subsidiaries engaged in or given notice of layoffs or employment terminations sufficient in number to trigger application of any similar state or local law, with respect to which, under either (i) or (ii) above or under state or local law, the Company or any of the Subsidiaries has any current liability material to the Company and the Subsidiaries taken as a whole.

Section 3.08 LITIGATION; REGULATORY COMPLIANCE.

(a) Except as set forth in SCHEDULE 3.10(a) of the Disclosure Letter, none of the Company or any of the Significant Subsidiaries has been served with, or has otherwise received written notice of, any Suit against the Company or any of the Significant Subsidiaries and, to the Company's Knowledge, no Suit is pending against the Company or any Significant Subsidiary for which service of process or other written notice has not yet been received. To the Company's

Knowledge, (i) no Suit has been threatened against the Company or any of the Significant Subsidiaries, or as to matters related to the business of the Company or any of its current or former Subsidiaries, against any Affiliate of the Company or any of the Subsidiaries, and (ii) there is no reasonable basis upon which any Suit may be initiated against the Company or any of the Significant Subsidiaries, in each case, which is reasonably expected to have a Material Adverse Effect.

(b) Except as set forth in SCHEDULE 3.10(c) of the Disclosure Letter, neither the Company nor any Subsidiary is party to or bound by (i) any agreement to pay damages or fines to, or provide indemnification, contribution or expense reimbursement to any Person with respect to any Active Proceedings, or (ii) any release of any claims that it may have against any Person with respect to any matter that is the subject of the Active Proceedings. No such Person has given written notice to the Company or any of the Subsidiaries of its intention to seek such indemnification or expense reimbursement.

(c) Neither the Company nor any Subsidiary is a named party in any material outstanding order, writ, injunction, judgment, arbitration award or decree of any court, arbitrator, government agency, or instrumentality.

Section 3.09 COMPLIANCE WITH LAWS.

(a) The Company and each of the Subsidiaries has complied with, is not in violation of, and has not received any written notices alleging any violation with respect to, any applicable provisions of any Laws with respect to the conduct of its business, or the ownership or operation of its properties or assets, except for failures to comply or violations that have not had, and would not reasonably be expected to have, a Material Adverse Effect.

(b) The Company has had in effect a policy regarding insider trading since at least January 1997, and the Company is not aware of any violation thereof.

Section 3.10 LICENSES AND PERMITS. The Company and each of the Subsidiaries has all material Permits necessary to permit the ownership of property and the conduct of business as presently conducted by the Company and the Subsidiaries, and all such Permits are valid and in full force and effect. No such Permit is reasonably expected to be terminated as a result of the execution of this Agreement, the Transaction Documents or consummation of the transactions contemplated hereby or thereby.

Section 3.11 AFFILIATE TRANSACTIONS. Since June 30, 2002, all transactions (other than those relating to services as directors or employees) between or among the Company or any Subsidiary, on the one hand, and any Affiliate of the Company (other than a Subsidiary), on the other hand, have been in the ordinary course of business, consistent with past practices, and have been on fair and reasonable terms, no less favorable to the Company or any Subsidiary than such terms as reasonably could be expected to be obtained in a comparable arm's-length transaction with an unaffiliated Person.

Section 3.12 ACCOUNTING CONTROLS. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorizations, (b) transactions are

recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and to maintain assets accountability, (c) access to assets is permitted only in accordance with management's general or specific authorization and (d) the recorded accountability for assets is compared with the existing assets at reasonable

intervals and appropriate action is taken with respect to any differences.

Section 3.13 PRIVATE PLACEMENT. Neither the Company, nor any Person authorized to, or with authority to, act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the New Warrants. The Company has not, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the New Warrants sold pursuant to this Agreement.

Section 3.14 NON-INVESTMENT COMPANY. The Company has been advised of the rules and requirements under the Investment Company Act. The Company is not, and immediately after receipt of payment for the New Warrants will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act.

Section 3.15 U.S. REAL PROPERTY HOLDING CORPORATION. The Company is not now, and has never been a "United States Real Property Holding Corporation" as defined in Section 897(c)(2) of the Code and Section 1.897-2(b) of the Treasury Regulations promulgated thereunder.

Section 3.16 NASDAQ NATIONAL MARKET. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the Nasdaq National Market under the symbol "AZPN," and, except as contemplated by this Agreement, the Company has taken no action designed to, or expected to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market. Except as set forth in SCHEDULE 3.23 of the Disclosure Letter, the Company has not received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing. The Company is not currently in violation of the Nasdaq listing standards. There are no matters with respect to which the Company has received notice of violation or deficiency from Nasdaq that, to the Company's Knowledge, remain open or unresolved.

Section 3.17 APPLICATION OF TAKEOVER PROTECTIONS. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation or the laws of its state of incorporation that is or could become applicable to the Holders or the Purchasers as a result of the Holders or Purchasers, as applicable, and the Company fulfilling their obligations or exercising their rights under the Series B Documents or the Series D Agreement.

Section 3.18 DISCLOSURE. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Holders or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic

information (other than information to be disclosed in the 8-K Filing). The Company understands and confirms that each of the Holders will rely on the foregoing representations in effecting transactions in securities of the Company. The Company acknowledges and agrees that no Holder makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Article IV below and those specifically made in Article IV of the Series D Agreement.

Section 3.19 ACKNOWLEDGMENT REGARDING HOLDERS. The Company acknowledges and agrees that each of the Holders is acting solely in the capacity of an arm's length party with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Holder is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to

this Agreement and the transactions contemplated hereby. The Company confirms that it has been advised (and knows of no facts as a basis to doubt) that each of the Holders is acting solely in the capacity of an individual arm's length party with respect to this Agreement and the transactions contemplated hereby and that no Holder is acting as a financial advisor or fiduciary (or in any similar capacity) of or for any other Holder with respect to this Agreement and the transactions contemplated hereby. The Company further represents to each Holder that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF EACH HOLDER

Each Holder, severally as to itself and no other Holder, hereby represents and warrants to the Company and to each other Holder, as of the date hereof and (except where there is a specific reference to the date hereof) as of the Closing Date, that:

Section 4.01 EXISTENCE AND POWER. Such Holder is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

Section 4.02 AUTHORIZATION. Such Holder has the requisite corporate power to execute, deliver and perform its obligations under this Agreement and the other Series B Documents to which it is a party and has taken all necessary action to authorize the execution and delivery by it of this Agreement and such other Series B Documents. This Agreement constitutes, and each of the other Series B Documents, when executed and delivered by such Holder, will constitute, a valid and binding agreement of such Holder, enforceable against such Holder in accordance with its terms.

Section 4.03 GOVERNMENTAL AUTHORIZATION. The execution, delivery and performance by such Holder of this Agreement and the other Series B Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, require no material approval of, or material filing with, any governmental body, agency or official, in each case to be made or obtained by such Holder, other than the filing by such Holder with the Commission of such reports under the Exchange Act as may be required in connection with this Agreement and the other Series B Documents and the transactions contemplated hereby and thereby to be effected at or prior to the Closing, and such filings as may be required to be made pursuant to Nasdaq rules.

Section 4.04 NONCONTRAVENTION. The execution, delivery and performance by such Holder of this Agreement and the other Series B Documents to which it is a party, and the consummation by such Holder of the transactions contemplated hereby and thereby, do not and will not violate the organizational documents of such Holder, if such Holder is other than a natural person, or any applicable material law, rule, regulation, judgment, injunction, order or decree in effect on the date hereof and applicable to such Holder.

Section 4.05 TITLE TO REPURCHASED SHARES AND EXISTING WARRANTS. Such Holder has good and valid title to (i) the shares of Series B Preferred Stock identified with respect to such Holder on SCHEDULE B, and (ii) the Existing Warrant identified with respect to such Holder on SCHEDULE C, in each case free and clear of any and all Liens, other than Liens created by the Company or arising from any act or omission (where the Company has an obligation to act) of the Company, and other than restrictions imposed by Law, under the "Transaction Documents" (as defined in the Series B Purchase Agreement) or under any other agreement between such Holder and the Company or the organizational documents of the Company (collectively, the "HOLDER LIENS"). After the consummation of the repurchase by the Company from Holders of the Repurchase Shares pursuant hereto and the exchange by such Holder of shares of Series B Preferred Stock for shares

of Series D-2 Preferred Stock and Series D Warrants pursuant to the Series D Agreement, such Holder will own no shares of Series B Preferred Stock, whether beneficially or of record.

Section 4.06 PRIVATE PLACEMENT. Such Holder is acquiring the applicable New Warrant pursuant to this Agreement for investment and not with a view to the resale or distribution thereof or the Warrant Shares or any interest therein other than in a transaction that is registered or exempt from registration under the Securities Act; PROVIDED that this representation is without prejudice to such Holder's right to dispose of such New Warrant or the Warrant Shares in compliance with such New Warrant and applicable securities laws. Nothing contained herein shall be deemed a representation or warranty by such Holder to hold the Warrant Securities for any period of time. Such Holder does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Warrant Securities. At all times since the time such Holder was initially offered the New Warrant, such Holder has been an "accredited investor" as such term is defined in Regulation D under the Securities Act.

Section 4.07 ACCESS TO INFORMATION. Such Holder acknowledges that it has been afforded: (a) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the New Warrants and the merits and risks of investing in the Warrant Securities; (b) access to information about the Company and the Subsidiaries and their respective financial condition sufficient to enable it to evaluate its investment; and (c) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Holder or its representatives or counsel, nor any other provisions of this Section 4.07, shall modify, amend or affect such Holder's right to rely on the truth, accuracy and completeness of the representations and warranties contained in this Agreement, any other Series B Document or the Series D Agreement.

Section 4.08 GENERAL SOLICITATION. Such Holder is not acquiring the applicable New Warrant as a result of any advertisement, article, notice or other communication regarding the New Warrants published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

Section 4.09 RELIANCE. Such Holder understands and acknowledges that (a) the applicable New Warrant is being offered and sold to it without registration of such New Warrant or the related Warrant Shares under the Securities Act in a private placement that is exempt from the registration provisions of the Securities Act and (b) the availability of such exemption depends in part on, and the Company will rely upon the accuracy and truthfulness of, the foregoing representations and such Holder hereby consents to such reliance.

Section 4.10 ABSENCE OF LITIGATION. To the actual knowledge of such Holder, there is no Suit pending or threatened by or before any court or other governmental body or arbitrator against such Holder or any of its Affiliates as of the date hereof in which an unfavorable outcome, ruling or finding in any said matter, or for all such matters taken as a whole, questions this Agreement or any of the other Series B Documents or seeks to or would reasonably be expected to delay or prevent the consummation of the transactions contemplated hereunder or thereunder, or the right of such Holder to execute, deliver and perform hereunder or thereunder.

Section 4.11 FINDERS' FEES. Except for the fees and expenses to be paid by the Company pursuant to the terms of this Agreement and the Series D Agreement, there is no investment banker, broker, finder or other intermediary which has been retained by such Holder who is or will be entitled to any fee or

commission from the Company arising from consummation of the transactions contemplated by this Agreement and the other Series B Documents.

Section 4.12 REPRESENTATIONS EXCLUSIVE. The Holder acknowledges and agrees that the Company has made no representation or warranty with respect to the transactions contemplated hereby other than those specifically set forth in Article III above and in the Transaction Documents.

ARTICLE V
AGREEMENTS OF THE PARTIES

Section 5.01 FURTHER ASSURANCES. Each of the Holders, severally as to itself, agrees to use commercially reasonable efforts to cause the conditions to Closing set forth in Sections 6.01(b) and 6.02(d) to be satisfied. The Company agrees to use commercially reasonable efforts to cause the conditions to Closing set forth in Sections 6.01(b), 6.01(c), 6.01(d), 6.01(f), 6.01(g) and 6.01(h) to be satisfied.

Section 5.02 SECURITIES LAWS DISCLOSURE; PUBLICITY. The Company shall, within one Trading Day of the date hereof, issue a press release reasonably acceptable to the Holders disclosing all terms of the transactions contemplated hereby, by the other Series B Documents and by the Transaction Documents. The Company shall, within two Trading Days after the date

hereof, file a Current Report on Form 8-K with the Commission describing the material terms of the transactions contemplated by the Series B Documents and the Transaction Documents in the form required by the Exchange Act, and attaching the material Series B Documents and material Transaction Documents as exhibits to such Form 8-K (the "8-K FILING"). Thereafter, the Company shall timely file any filings and notices required by the Commission or applicable law with respect to the transactions contemplated hereby and provide copies thereof to the Holders promptly after filing. The Company shall, at least two Trading Days prior to the filing or dissemination of any disclosure required by this paragraph, provide a copy thereof to legal counsel to the Holders for its review, except that with respect to the 8-K Filing as contemplated by the second sentence of this Section 5.02, the Company shall provide such copy thereof to the legal counsel to the Holders for its review by no later than 5:00 P.M., Eastern Standard Time, on the first Trading Day following the date hereof. Counsel to the Holders shall be required to provide all comments that it and the Holders may have on the 8-K Filing by 1:00 P.M., Eastern Standard Time on the second Trading Day following the date hereof. The Company and legal counsel to each Holder shall consult with each other in issuing any press releases or otherwise making public statements or filings and other communications with the Commission or any regulatory agency or Trading Market with respect to the transactions contemplated hereby, by the other Series B Documents and by the Transaction Documents, and no party shall issue any such press release or otherwise make any such public statement, filing or other communication without the prior consent of the other (which consent shall not be unreasonably withheld), except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement, filing or other communication. As of the time of the filing of the 8-K Filing with the Commission, no Holder shall be in possession of any material, nonpublic information received from the Company, any of its Subsidiaries or any of its respective officers, directors, employees or agents, that is not disclosed in the 8-K Filing. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, employees and agents, not to, provide any Holder with any material nonpublic information regarding the Company or any of its Subsidiaries from and after the filing of the 8-K Filing with the Commission without the express written consent of such Holder. In the event of a breach of the foregoing covenant by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents, in addition to any other

remedy provided herein, the other Series B Documents or in the Transaction Documents, a Holder shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of any material, nonpublic information without the prior approval by the Company, its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Holder shall have any liability to the Company, its Subsidiaries, or any of its or their respective officers, directors, employees, shareholders or agents for any such disclosure.

Section 5.03 ADDITIONAL SERIES B MATTERS.

(a) Notwithstanding the last sentence of Section 9(a)(iv) of the Series B Certificate of Designations, each of the Holders, severally as to itself, and the Company agrees that if, on or prior to the later of (x) December 31, 2003 or (y) 30 days after the termination of this Agreement (such later date, the "ELECTION DATE"), any Holder duly gives a Redemption Notice to the Company requesting redemption of such Person's shares of Series B Preferred Stock pursuant to Section 9(a) of the Series B Certificate of Designations (and in compliance with Section 5.03(b) hereof), then the Company may pay or cause the payment of the

Redemption Price with respect to the shares of Series B Preferred Stock covered by such Redemption Notice, at the Company's sole option and in its sole discretion, (i) in cash or in Common Stock or in any combination thereof, to the extent the Equity Conditions are satisfied at such time (it being understood that cash or Common Stock shall be used for redemptions if the Equity Conditions are satisfied at such time), and (ii) in cash or in Series C Preferred Stock or in any combination thereof, to the extent the Equity Conditions are not satisfied at such time (it being understood that cash or Series C Preferred Stock shall be used for redemptions if the Equity Conditions are not satisfied at such time).

Notwithstanding anything to the contrary, including, without limitation, in the Series B Transactions Documents and herein, the Company may not issue any shares of Series C Preferred Stock unless and until (i) the Company has issued the number of shares of Common Stock equal to the Issuable Maximum (as defined in the Series B Purchase Agreement) and (ii) has submitted to its stockholders for a stockholder vote (in accordance with the provisions of the Series B Purchase Agreement), a request to approve the issuance of additional shares of Common Stock (x) in an amount not less than such amount as the Company reasonably estimates would be required to redeem all shares of Series B Preferred Stock pursuant to the applicable provisions of the Series B Certificate of Designations in shares of Common Stock and (y) in a manner such that no further stockholder approval will be required under the Nasdaq Stockholder Approval Rule (as defined in the Series B Purchase Agreement) for the issuances of Underlying Shares (as defined in the Series B Purchase Agreement), and such request shall not have received the requisite vote necessary for such approval at a duly called meeting of the Company's stockholders. From the date of this Agreement through the earliest of (i) December 31, 2003, (ii) the Closing and (iii) termination of this Agreement, the Company shall not accrue any of the quantified penalties set forth in Section 3 of the Registration Rights Agreement. The Company shall not accrue any specifically quantified penalties in the Series B Transaction Documents during the period in which it is seeking the stockholder approval set forth herein. Furthermore, the Company shall not be required to submit any matter to a vote of its stockholders in accordance with the terms of this Section 5.03 (i) prior to the termination of the Series D Agreement, or (ii) if the Company has (x) diligently and in good faith pursued a favorable Nasdaq determination that the applicable stockholder vote will satisfy the Nasdaq Stockholder Approval Rule and (y) after the Company has in good faith exhausted all reasonable courses of action to obtain such favorable determination (including, without limitation, consultation with the Holders and any reasonable modification to this or any other agreement), Nasdaq has nonetheless finally determined that no stockholder

vote will satisfy the Nasdaq Stockholder Approval Rule.

(b) Each of the Holders, severally as to itself, agrees that, after the execution of this Agreement through the earliest of (i) December 31, 2003, (ii) the Closing and (iii) termination of this Agreement, such Holder shall not request repurchase or redemption of any of the shares of Series B Preferred Stock held by such Holder (whether beneficially or of record) by the Company pursuant to Section 9(a)(i) of the Series B Certificate of Designations during such period, provided that each such Holder's obligations under this Section 5.03(b) shall terminate immediately upon the occurrence of an event described in Section 1(b)(ii)(D) of the form of Certificate of Designations attached as EXHIBIT A to the Series D Agreement as originally executed. The Company expressly agrees that no failure to act by any Holder during the period described in this Section shall prejudice any rights of a Holder against the Company.

(c) In the event that the Company issues Series C Preferred Stock as a result of any event occurring on or prior to the End Date (as defined below), each Holder shall have the right (the "SERIES C EXCHANGE RIGHT") with respect to any Series C Preferred Stock that the Company ultimately issues, directly or indirectly, as a result of such event, exercisable at any time on or prior to the thirtieth Trading Day following the delivery of certificates for the applicable Series C Preferred Stock to such Holder (but not thereafter) subject to the limitations contained in this Section 5.03(c), to exchange any or all of the shares of Series C Preferred Stock received or to be received by it for one or more Series C Notes payable to such Holder (or Holder's Affiliate and in such denominations as Holder may request) in the aggregate principal amount equal to the Stated Value (including any accrued dividends) of the shares of Series C Preferred Stock being so exchanged for the Series C Notes. In the event that a Holder indicates in writing prior to receipt of shares of Series C Preferred Stock that it intends to exchange shares of Series C Preferred Stock to be received by such Holder, the Company shall, in lieu of issuing any Series C Preferred Stock it would have otherwise issued, issue one or more Series C Notes payable to such Holder in the aggregate principal amount equal to the Stated Value of the Series C Preferred Stock to have been issued. In no event, however, shall the Company be required to issue nor shall the Holders be entitled to receive an amount of Series C Notes in excess of (i) $60,000,000 less (ii) the amount of cash or Common Stock paid in redemption or repurchase of Series B Preferred Stock on or prior to the issuance of the Series C Note. With respect to each Holder, this Section 5.03(c) shall require that there be an action taken by such Holder within 90 days after the End Date that directly or indirectly ultimately results in the issuance of Series C Preferred Stock, or the Series C Exchange Right shall terminate with respect to such Holder. The "END DATE" shall be the date thirty (30) days after the later of (i) December 31, 2003, if this Agreement is terminated on or before December 1, 2003 or (ii) the termination of this Agreement.

(d) The Holders agree that notwithstanding anything to the contrary in the Series B Transaction Documents, during any period set forth in Section 5.03(c), (i) any redemption or repurchase of Series B Preferred Stock requested by the Holders pursuant to the Series B Transaction Documents that is based upon the failure of the Company to be permitted under the rules and regulations of the NASDAQ National Market to issue all shares of Common Stock then required to be issued pursuant to the Series B Transaction Documents solely as a result of the absence of the stockholder approval described in Section 5.03(a) above shall be at a price per share of Series B Preferred Stock equal to the initial Stated Value of the Series B Preferred Stock being redeemed plus all accrued but unpaid dividends thereon through the date of payment, and (ii) in such event, none of the Holders (or any transferee hereof) shall be entitled to any Warrant Damage Amount (as defined in the Series B Transaction Documents).

Section 5.04 TRANSFER RESTRICTIONS.

(a) Warrant Securities may only be disposed of pursuant to an effective registration statement under the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of Warrant Securities other than pursuant to an effective registration statement or to the Company or pursuant to Rule 144(k), except as otherwise set forth herein, the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be

reasonably satisfactory to the Company, to the effect that such transfer does not require registration under the Securities Act. Notwithstanding the foregoing, the Company hereby consents to and agrees to register on the books of the Company and with its transfer agent, without any such legal opinion, any transfer of Warrant Securities by a Holder to an Affiliate of such Holder, PROVIDED that the transferee certifies to the Company that it is an "accredited investor" as defined in Rule 501(a) under the Securities Act and is purchasing such Warrant Securities for investment and not with a view to distributing or reselling such Warrant Securities in violation of securities laws and agrees in writing to be bound by the provisions of this Agreement.

(b) Each Holder agrees to the imprinting, so long as is required by this Section 5.04(b), of the following legend on any certificate evidencing Warrant Securities:

> THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Certificates or instruments evidencing Warrant Securities shall not be required to contain such legend or any other legend (i) pursuant to or following any sale of such Warrant Securities pursuant to an effective Registration Statement covering the resale of such Warrant Securities under the Securities Act, (ii) following any sale of such Warrant Securities pursuant to Rule 144, (iii) if such Warrant Securities are eligible for sale under Rule 144(k), or (iv) if such legend is not, in the reasonable opinion of the Company counsel, required under the circumstances under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the Commission). Following the effectiveness of the shelf registration statement to be filed pursuant to Section 2.4 of the Investors Rights Agreement or at such earlier time as a legend is no longer required for certain Warrant Securities, the Company will, no later than three Trading Days following the delivery by a Holder to the Company or the Company's transfer agent of a legended certificate or instrument representing such Warrant Securities, deliver or cause to be delivered to such Holder a certificate or instrument, as applicable, representing such Warrant Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in this Section, except as may be required by applicable law.

(c) The Company acknowledges and agrees that a Holder may from time to time pledge pursuant to a bona fide margin agreement or grant a security interest in some or all of the Warrant Securities and, if required under the terms of such arrangement, such Holder may transfer pledged or secured Warrant Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of the pledgee, secured party or pledgor shall be required in connection therewith except as required by applicable law. Further, no notice shall be required of such pledge. At the appropriate Holder's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Warrant Securities may reasonably request in connection with a pledge or transfer of the Warrant Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders thereunder.

Section 5.05 ACKNOWLEDGMENT OF DILUTION. The Company acknowledges that the issuance of the Warrant Securities will result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that, subject to the satisfaction by the Holders of their obligations under the Series B Documents, the Company's obligations under the Series B Documents, including without limitation its obligation to issue the Warrant Securities pursuant to the Series B Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim that the Company may have against any Holder.

Section 5.06 INTEGRATION. The Company shall not, and shall use its best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Warrant Securities in a manner that would require the registration under the Securities Act of the sale of the Warrant Securities to the Holders, or that would be integrated with the offer or sale of the Warrant Securities for purposes of the rules and regulations of any Trading Market.

Section 5.07 RESERVATION AND LISTING OF SECURITIES. The Company shall maintain a reserve of a sufficient number of shares of Common Stock for issuance pursuant to the New Warrants of all Warrant Shares that are exercisable from time to time thereunder, less any shares of Common Stock issued upon exercise of the New Warrants.

Section 5.08 CONVERSION AND EXERCISE PROCEDURES. The exercise requirements included in the Warrants and in the Certificate of Designations set forth the totality of the procedures required in order to exercise the New Warrants or convert the Shares on or after the Closing. No additional legal opinion or other information or instructions shall be necessary to enable the Holders to exercise their New Warrants or convert their Shares except as may be required by law. The Company shall honor exercises of the New Warrants and conversions of the Shares and shall deliver underlying Common Stock in accordance with the terms, conditions and time periods set forth in the Series B Documents or Certificate of Designations, as applicable.

Section 5.09 SURVIVAL/INDEMNIFICATION.

(a) All of the representations and warranties of the Company and the Purchasers contained in this Agreement and in the other Transaction Documents shall survive the execution and delivery hereof and thereof and the consummation of the transactions contemplated hereby, and shall remain in full force and effect until the Survival Date. All covenants and agreements of the Company and the Purchasers contained in this Agreement and in the other Transaction Documents shall survive the execution and delivery hereof and thereof and the

transactions contemplated hereby, and shall remain in full force and effect in accordance with their respective terms. Without limiting the generality of the foregoing, with respect to a breach of any representation or warranty for which notice is given prior to 5:00 p.m., New York City time, on the Survival Date, the indemnification obligation set forth below shall survive the Survival Date until the claim identified in the notice is finally resolved.

(b) From and after the date hereof and prior to the Series D Closing (and with respect to the matters described in item (ii) below), from and after the date hereof and on and after the Closing),, the Company agrees to indemnify, defend and hold harmless, (i) each Holder and (ii) such Holder's Related Parties (collectively, "HOLDER INDEMNIFIED PARTIES") from and against any and all losses, claims, damages, liabilities, costs and expenses, including without limitation reasonable attorneys' fees and disbursements and other expenses incurred in connection with investigating, preparing, settling or defending any action, claim or proceeding (each a "PROCEEDING"), pending or threatened, and the costs of enforcement thereof (collectively, "LOSSES"), which any of such Holder Indemnified Parties may suffer or to which any Holder Indemnified Party may become subject to the extent arising from (i) any breach of any representation, warranty, covenant or agreement, made by, or to be performed on the part of, the Company under this Agreement, and (ii) the Company (or any persons to whom a proxy is granted) exercising any right that has been granted by any Holder pursuant to those certain Voting Agreements entered into on the date hereof, and in each case to reimburse any such Holder Indemnified Party for all such Losses as they are incurred by such Holder Indemnified Party. Notwithstanding the foregoing, for purposes of this Section 5.09(b), "Losses" shall not include any losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) and disbursements and other expenses incurred or suffered by the Company that the Holder, as a holder of the Company's outstanding equity securities, would also have suffered, either directly or indirectly, by virtue of maintaining an equity interest in the Company in the absence of the Series B Documents, the Transaction Documents and/or the transactions contemplated thereby. The provisions of this Section 5.09(b) shall be of no force or effect and shall terminate upon the closing of the transactions contemplated by this Agreement. For purposes of this Agreement, a person's "Related Parties" shall mean such person's Affiliates and any officer, director, partner, member, controlling person, employee or agent of such person or any of its Affiliates; provided that none of the Series D-1 Purchasers shall be considered Related Parties of the Company for purposes of Section 5.09(c).

(c) From and after the date hereof, each Holder severally as to itself and no other Holder, agrees to indemnify, defend and hold harmless, the Company and its Related Parties from and against any and all Losses incurred in connection with investigating, preparing, settling or defending any Proceeding, pending or threatened, which the Company or any of its Related Parties may suffer or become subject to arising solely from any breach of any covenant

or agreement, made by, or to be performed on the part of, such Holder under this Agreement, and in each case to reimburse the Company and its Related Parties for all such Losses as they are incurred by the Company or any of its Related Parties; PROVIDED that for purposes of clarity in this Section 5.09(c), "Losses" shall not include any losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) and disbursements and other expenses incurred or suffered by the Company that the Company would have suffered in the absence of the Series B Documents, the Transaction Documents and/or the transactions contemplated thereby.

(d) From and after the Series D Closing, the Company agrees to indemnify, defend and hold harmless, each Holder Indemnified Party from and against any and all Losses incurred in connection with investigating, preparing, settling or defending any Proceeding initiated by a third party (other than the Company) against such Holder Indemnified Party, which such Holder Indemnified

Party may suffer or to which such Holder Indemnified Party may become subject to the extent arising from any breach of any representation, warranty, covenant or agreement, made by, or to be performed on the part of, the Company under this Agreement, and/or the consummation of the transactions contemplated by this Agreement (other than to the extent resulting from actions or omissions by such Holder in breach of this Agreement or actions by Holder unrelated to this Agreement and the transactions contemplated hereby), and in each case to reimburse any such Holder Indemnified Party for all such Losses as they are incurred.

(e) Any Person seeking indemnity hereunder (the "INDEMNIFIED PERSON") shall promptly give notice to the Person from whom indemnity is being sought (the "INDEMNIFYING PERSON") of any demand, claim or event which would, or would reasonably be expected to, give rise to a claim or the commencement of any Proceeding in respect of which indemnity may be sought under this Section 5.09. Notwithstanding the foregoing, the failure to so give prompt notice to the Indemnifying Person will not relieve the Indemnifying Person from liability, except to the extent such failure or delay materially prejudices the Indemnifying Person. The Indemnifying Person may participate in and, to the extent that it shall elect by written notice delivered to the Indemnified Person promptly after receiving such notice from the Indemnifying Person, shall be entitled to control the defense of any such Proceeding at its own expense with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Person to such Indemnified Person of its election to control the defense thereof, the Indemnifying Person shall not be liable to such Indemnified Person for any legal expenses subsequently incurred by such Indemnified Person in connection with the defense thereof, PROVIDED, HOWEVER, that if the named parties in any Proceeding (including any impleaded parties) include both the Indemnified Person and the Indemnifying Person and there exists or shall exist a conflict of interest that would make it inappropriate, in the opinion of counsel to the Indemnified Person, for the same counsel to represent both the Indemnified Person and the Indemnifying Person or any affiliate or associate thereof, the Indemnified Person shall be entitled to retain its own counsel at the expense of the Indemnifying Person; PROVIDED, HOWEVER, that the Indemnifying Person shall not be responsible for the fees and expenses of more than one separate counsel for all Indemnified Persons. The Indemnifying Person shall not be liable under this Section 5.09 for the settlement of any Proceeding in respect of which indemnity may be sought hereunder if such settlement was effected without the consent of the Indemnifying Person (which consent will not be unreasonably denied, withheld or delayed).

Section 5.10 SHAREHOLDERS RIGHTS PLAN. In the event that a shareholders rights plan is adopted by the Company, no claim will be made or enforced by the Company or any other Person that any Holder is an "Acquiring Person" under any such plan or in any way could be deemed to trigger the provisions of such plan by virtue of receiving Warrant Securities or Shares under the Series B Documents or the Series D Agreement.

Section 5.11 GENERAL RELEASE. In further consideration of the Holder entering into this Agreement, effective as of the date of this Agreement, the Company on behalf of itself and, to the extent permitted by law, its administrators, devisees, trustees, partners, directors, officers, shareholders, employees, consultants, representatives, predecessors, principals, agents, parents, associates, affiliates, subsidiaries, attorneys, accountants, successors, successors-in-interest and assignees (collectively, the "COMPANY RELEASING PERSONS"), hereby waives and releases, to the fullest extent permitted by law, any and all claims and causes of action, which to the actual knowledge of the President, Chief Financial Officer, General Counsel or other executive officers of the Company (identified as such in the most recent Public Reports of the Company as of the date hereof) exist as of the date hereof (collectively, the "COMPANY CLAIMS"), that any of the Company Releasing Persons had or currently has against (i) the Holder, (ii) any of the Holder's current or former parents, members, partners, shareholders, affiliates, subsidiaries, predecessors

or assigns, or (iii) any of the Holder's or such other persons' or entities' current or former officers, directors, members, partners, shareholders, employees, agents, principals, signatories, advisors, consultants, spouses, heirs, estates, executors, attorneys, auditors and associates and members of their immediate families (collectively, the "HOLDER RELEASED PERSONS"), including, without limitations, any Company Claims arising out of the Series B Purchase Agreement or any of the "Transaction Documents" (which solely for purpose of this sentence shall be as defined in the Series B Purchase Agreement). Company Claims that to the actual knowledge of the President, Chief Financial Officer, General Counsel or other executive officers (identified as such in the most recent Public Reports of the Company as of the date hereof) of the Company become known on or after the date of this Agreement are not waived or released hereby. In addition, Company Claims relating to any matter set forth on SCHEDULE 5.11 hereto are not waived or released hereby. Notwithstanding the foregoing, the Holder acknowledges that the release set forth above does not affect, waive or release any claim that any Company Releasing Person may have under the Series B Documents or the Transaction Documents.

Section 5.12 TRANSFER OF SERIES B PREFERRED STOCK. Each Holder acknowledges and agrees that any sale, transfer or other disposition of shares of Series B Preferred Stock or any interest therein ("TRANSFER") prior to the earlier of the Closing or the termination of this Agreement shall comply with the restrictions on transfer imposed by Law and any other agreement applicable to such Holder's shares. No Holder will exercise or transfer any Existing Warrants or convert or transfer any Series B Preferred Stock prior to or on the earlier of (X) the Closing or (Y) termination of this Agreement, other than to (x) an Affiliate of the Holder or (y) any other Holder or any of its Affiliates. In addition, such Holder shall (a) give written notice of such Transfer to the Company, and (b) cause the transferee, to the extent such transferee is not then a party to this Agreement and the Transaction Documents to the extent applicable to such transferring Holder, as a condition precedent to such Transfer, to execute and deliver a written instrument to the Company by which such transferee agrees to be bound by the obligations imposed under this Agreement and the Transaction Documents to the extent applicable to such transferring Holder.

Section 5.13 UPDATE OF DISCLOSURE. On or prior to the Closing Date, the Company shall deliver to the Holders written notice of any event or development that: (a) renders any statement, representation or warranty of the Company in this Agreement or the Transaction Documents (including the Disclosure Letter to the Series D Agreement) inaccurate or incomplete in any material respect; (b) constitutes or results in a breach by the Company of, or a failure by the Company to comply with, any agreement or covenant in this Agreement or the Transaction Documents applicable to it; and (c) occurs after the date hereof which, if it had occurred prior to the date hereof, would have caused or constituted, or would have reasonably been expected to have caused or constituted, a breach or default of any of the representations or warranties of the Company contained in or referred to in this Agreement or any Transaction Document (including any Schedules or Annexes). Any disclosure made by the Company pursuant to clause (a) of the prior sentence that specifically references the provisions of this SECTION 5.13 shall be deemed to amend and supplement the Disclosure Letter for all purposes of this Agreement other than SECTION 7.04(a)(iii).

Section 5.14 RULE 144. The Company agrees that whenever (i) the Holder is attempting to sell or transfer the Warrant, Warrant Shares, Series D-2 Preferred Stock, the Common Stock into which the Series D Preferred Stock is convertible into, the Series D Warrants and the Common Stock issuable upon exercise of the Series D Warrants, and (ii) such sale or transfer requires an opinion of legal counsel reasonably acceptable to the Company to the effect that such sale or transfer is exempt from the registration requirements of the Securities Act, the Company shall accept the opinion of Proskauer Rose LLP or Schulte Roth & Zabel LLP as satisfaction of such requirement.

Section 5.15 SERIES C NOTES. Upon the issuance of any Series C Notes, the Company will not be in default of any of its representations, warranties, covenants or obligations thereunder as if such Series C Notes had been issued on the date hereof.

Section 5.16 ARTICLE V. The provisions of this Article V shall be immediately and fully binding upon the parties hereto, and, subject to Section 7.04(b)(iii), shall survive termination of this Agreement.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.01 CONDITIONS TO EACH HOLDER'S OBLIGATIONS. The obligations of each Holder at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) No provision of any applicable law or regulation shall have been enacted, no judgment, injunction, order, decree or arbitration award shall have been issued, and no Suit, of which any party hereto shall have received notice, shall be pending or threatened, in any case which seeks to prohibit, and which would reasonably be expected to result in the enjoinment of, any of the transactions contemplated by this Agreement or the other Series B Documents.

(b) The Company shall have received from each other party thereto (i) a counterpart of each of the Series B Documents to which such other party is a party, signed on behalf of such other party, or (ii) a facsimile transmission of signature pages to each of the Series B Documents to which such other party is a party, signed on behalf of such other party.

(c) The Company shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date, (ii) the representations and warranties of the Company made to the Holders in this Agreement or any other Series B Document which are qualified as to "materiality," "Material Adverse Effect" or words of similar meaning shall have been true and correct when made on the date hereof and shall be true and correct at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which shall be true and correct as of such date), (iii) all other representations and warranties of the Company made to the Holders in this Agreement or any other Series B Document shall have been true and correct in all material respects when made on the date hereof and shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which shall be true and correct as of such date), and (iv) such Holder shall have received a certificate (the "COMPANY OFFICER CERTIFICATE") signed by the Chief Executive Officer or Chief Financial Officer of the Company to the foregoing effect.

(d) The transactions contemplated by the Series D Agreement shall be completed on the Closing Date in a manner reasonably acceptable to such Holder, and the Company shall have delivered evidence reasonably satisfactory to such Holder to such effect.

(e) Such Holder shall have received from each other party thereto either (i) a counterpart of each of the Series B Documents to which such other party is a party, signed on behalf of such other party, or (ii) a facsimile transmission of signature pages to each of the Series B Documents to which such other party is a party, signed on behalf of such other party.

(f) Such Holder shall have received the Repurchase Price payable to such Holder for such Holder's Repurchased Shares, as provided in Section 2.03(a)(i).

(g) Such Holder shall have received the New Warrant issuable to such

Holder or its designated Affiliate, as provided in Section 2.03(a)(ii).

(h) The Company shall have paid, in accordance with Section 7.03(a), the reasonable expenses of the Holders incurred prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Transaction Documents and the Series B Documents.

Section 6.02 CONDITIONS TO COMPANY'S OBLIGATIONS. The obligations of the Company to each Holder at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) No provision of any applicable law or regulation shall have been enacted, no judgment, injunction, order, decree or arbitration award shall have been issued, and no Suit, of which any party hereto shall have received notice, shall be pending or threatened, in any case

which seeks to prohibit, and which would reasonably be expected to result in the enjoinment of, any of the transactions contemplated by this Agreement or the other Series B Documents.

(b) (i) Each of the Holders shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date, (ii) the representations and warranties of all of the Holders made to the Company in this Agreement or any other Series B Document which are qualified as to "Material Adverse Effect" or words of similar meaning shall have been true and correct when made on the date hereof and shall be true and correct at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which shall be true and correct as of such date), (iii) all other representations and warranties of each of the Holders made to the Company in this Agreement or any other Series B Document shall have been true and correct in all material respects when made on the date hereof and shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of a particular date, which shall be true and correct as of such date), and (iv) the Company shall have received from each of the Holders a certificate (the "HOLDER CLOSING CERTIFICATE") to the foregoing effect with respect to such Holder, signed by a duly authorized representative of such Holder.

(c) The Series D Closing shall have occurred simultaneously with the Closing contemplated hereby.

(d) The Company shall have received from such Holder for cancellation (i) the stock certificates representing all of its Repurchased Shares and (ii) all of its Existing Warrants, duly endorsed in blank or together with requisite stock powers or other instruments of transfer, all as provided in Section 2.03(b).

ARTICLE VII
MISCELLANEOUS

Section 7.01 NOTICES. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party at its address or facsimile number set forth on the signature page hereof, or such other address or facsimile number as such party may hereinafter specify for the purpose of this Section to the party giving such notice. Each such notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified on the signature pages of this agreement and the appropriate confirmation is received or, (b) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or, (c) if given by any other means, when delivered at the address specified on the signature pages of this Agreement.

Section 7.02 AMENDMENTS AND WAIVERS.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by the Company and each Holder, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03 EXPENSES; DOCUMENTARY TAXES.

(a) Except as expressly set forth in this Agreement or any other Transaction Document or Series B Document, including Section 9.03(d) of the Series D Agreement, the Company and each Holder will each pay its own costs and expenses in connection with this Agreement and the other Transaction Documents and Series B Documents and the transactions contemplated hereby or thereby.

(b) The Company agrees to pay any and all stamp, transfer and other similar taxes payable or determined to be payable in connection with the repurchase of the Repurchased Shares and the exchange of the Existing Warrants for the New Warrants.

Section 7.04 TERMINATION.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual written agreement of the Company and each of the Holders;

(ii) automatically, with no further action being necessary by the Company, any Holder or any other Person, contemporaneously with the termination of the Series D Agreement;

(iii) by any Holder if the Company shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement or in any other Series B Document which, in any case, (A) would cause the condition set forth in Section 6.01(c) not to be satisfied and (B) is not cured to the reasonable satisfaction of such Holder within fifteen (15) days after notice thereof is received by the Company;

(iv) by the Company if any Holder shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement or in any other Series B Document which, in any case, (A) would cause the condition set forth in Section 6.02(b) not to be satisfied and (B) is not cured to the reasonable satisfaction of the Company within fifteen (15) days after notice thereof is received by such Holder;

(v) by the Company or any Holder if there shall be enacted or introduced any law or regulation, if any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction is issued, or if any Suit is filed, in any case which makes consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof illegal or otherwise permanently prohibited; or

(vi) by the Company or any Holder on or at any time after December 31, 2003.

(b) If this Agreement is terminated as permitted by Section 7.04(a), such termination shall be without liability of any party (or any Affiliate of such party) to the other parties to this Agreement; PROVIDED that:

(i) if such termination shall result from the breach by any party hereto of any of its representations, warranties, covenants or agreements contained in this Agreement, the breaching party shall be liable for any Losses resulting therefrom

(ii) subject to the immediately following clause (iii), Article V and Article VII shall remain fully binding upon the parties hereto and shall survive any termination of this Agreement; and

(iii) if (x) such termination shall result from a willful breach by any Holder of any representation, warranty, covenant or agreement set forth in this Agreement or the Series D Agreement or from the willful failure of any Series D-2 Purchaser to fulfill an obligation under the Series D Agreement, and (y) this Agreement is terminated pursuant to Section 7.04(a)(iv) or the Series D Agreement is terminated by the Company or the Series D-1 Purchasers pursuant to Sections 9.04(a)(iv) or 9.04(a)(viii) thereof as a result of such willful breach or such willful failure to fulfill an obligation, then the provisions of Section 5.03(c) shall terminate with respect to the Holders, and no Holder shall be entitled to exercise the Series C Exchange Right.

(c) The provisions of Article V and Article VII shall survive the termination of this Agreement.

Section 7.05 SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED that (i) the Company may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of Holders holding a majority of the outstanding shares of Series B Preferred Stock, and (ii) no Holder may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement, other than to (x) an Affiliate of the Holder or (y) any other Holder or any of its Affiliates, without the consent of the Company. Notwithstanding the foregoing, (i) any Holder may assign or transfer, in whole or, from time to time, in part, to (x) one or more of its Affiliates or (y) any other Holder or any of its Affiliates, the right to be issued the New Warrant hereunder, and (ii) subject to the terms and conditions of the applicable New Warrant and the Investor Rights Agreement, from and after the Closing Date, any Holder or other holder of a New Warrant may assign, pledge or otherwise transfer, in whole or from time to time in part, its rights hereunder to any Person who acquires any interest in such New Warrant. In addition, each Holder agrees that, if such Holder desires to transfer, in any manner, any of such Holder's shares of Series B Preferred Stock or Existing Warrants to either (x) an Affiliate of the Holder or (y) any other Holder or any of its Affiliates, such Holder shall comply with the provisions of Section 5.12 above.

Section 7.06 GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE STATE OF DELAWARE, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR

PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

Section 7.07 COUNTERPARTS; FACSIMILE SIGNATURES; EFFECTIVENESS. This Agreement may be executed in any number of counterparts (including facsimile signatures) each of which shall be an original with the same effect as if all signatures were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by each other party hereto. No provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 7.08 ENTIRE AGREEMENT. This Agreement and the other Series B Documents (and the Series D Agreement and related Transaction Documents) constitute the entire agreement and understanding between the parties hereto and supersede any and all prior agreements and understandings, written or oral, relating to the subject matter of the Series B Documents.

Section 7.09 HEADINGS. The headings in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 7.10 REMEDIES. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Holders and the Company will be entitled to specific performance under the Series B Documents without posting any bond or other security. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

Section 7.11 PAYMENT SET ASIDE. To the extent that the Company makes a payment or payments to any Holder pursuant to any Series B Document or a Holder enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 7.12 USURY. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any claim, action or proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Series B Document. Notwithstanding any provision to the contrary contained in any Series B Document, it is expressly agreed and provided that the total liability of the Company under the Series B Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other

sums in the nature of interest that the Company may be obligated to pay under the Series B Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Series B Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate of interest applicable to the Series B Documents from the effective date forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Holder with respect to indebtedness evidenced by the Series B Documents, such excess shall be applied by such Holder to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Holder's election.

Section 7.13 INDEPENDENT NATURE OF HOLDERS. The obligations of each Holder under any Series B Document or other Transaction Documents are several and not joint with the obligations of any other Holder or Purchaser, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder or Purchaser under any Series B Document or Transaction Documents. The decision of each Holder to enter into this Agreement and/or to purchase Shares and Series D Warrants pursuant to the Series D Agreement has been made by such Holder independently of any other Holder or Purchaser and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or of the Subsidiary which may have been made or given by any other Holder or Purchaser or by any agent or employee of any other Holder or Purchaser. Nothing contained herein or in any Series B Document or Transaction Document, and no action taken by any Holder or Purchaser pursuant thereto, shall be deemed to constitute the Holders or Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption

that the Holders or Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Series B Documents or the Transaction Documents. The Company expressly acknowledges that the Holders and Purchasers are not in any manner acting as a group. Each Holder shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement or out of the other Series B Documents or the Transaction Documents, and it shall not be necessary for any other Holder or Purchaser to be joined as an additional party in any proceeding for such purpose.

Section 7.14 ADJUSTMENTS IN SHARE NUMBERS AND PRICES. In the event of any stock split, stock subdivision or reverse stock, in each case however consummated, of the Common Stock (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Stock) occurring after the date hereof, each reference in the Series B Documents to a number of shares or a price per share shall be amended to appropriately account for such event.

Section 7.15 SERIES B CONSENT AND AGREEMENT. Each Holder consents to the Company entering into the Transaction Documents and the consummation of the transactions contemplated thereby. Each Holder agrees not to give notice under Section 16(a) of the Series B Certificate of Designations of an increase in percentage prior to the earliest of (i) the Closing, (ii) the termination of this Agreement, or (iii) December 31, 2003.

Section 7.16 TERMINATION OF CONFIDENTIALITY AGREMEENTS. Each of the Confidentiality Agreements is hereby terminated effective two Trading Days after the 8-K Filing and shall, after such time, be of no further force or effect and no party thereto shall have any liability thereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Repurchase and Exchange Agreement to be duly executed by their respective authorized signatories as of the date first above written.

ASPEN TECHNOLOGY, INC.

By: /s/ David L. McQuillin

Name: David L. McQuillin

Title: President and Chief Executive Officer

Address for notices:

Aspen Technology, Inc.
Ten Canal Park
Cambridge, Massachusetts 02141
Attention: Chief Financial Officer and General Counsel
Facsimile: 617.949.1717

with a copy to:

Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
Attention: Mark L. Johnson, Esq.
Facsimile: 617.526.5000

PINE RIDGE FINANCIAL INC.

By: /s/ Avi Vigder

Name: Avi Vigder

Title: Authorized Signatory

Address for notices:

Pine Ridge Financial Inc.
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022
Facsimile: 212.651.9010
Telephone: 212.651.9000

Attn: Avi Vigder

with a copy to:

Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Facsimile: 212.969.2900
Telephone: 212.969.3000
Attn: Adam J. Kansler, Esq.

SMITHFIELD FIDUCIARY LLC

By: /s/ Adam J. Chill

Name: Adam J. Chill
Title: Authorized Signatory

Address for notices:

Address for notices:

Smithfield Fiduciary LLC
c/o Highbridge Capital Management, LLC
9 West 57th Street, 27th Floor
New York, New York 10019
Facsimile: 212.751.0755
Telephone 212.287.4720
Attn: Ari J. Storch / Adam J. Chill

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Facsimile: 212.593.5955
Telephone: 212.756.2376
Attn: Eleazer Klein, Esq.

PERSEVERANCE LLC

By: /s/ Fiona Theaker

Name: Fiona Theaker
Title: Director

Address for notices:

Perseverance LLC
c/o Cavallo Capital Corp.
660 Madison Avenue

New York, NY 10022
Facsimile: 212.651.9010
Telephone: 212.651.9000
Attn: Avi Vigder

with a copy to:

Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Facsimile: 212.969.2900
Telephone: 212.969.3000
Attn: Adam J. Kansler, Esq.

SCHEDULE A

SECURITYHOLDERS

Pine Ridge Financial, Inc.
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022

Smithfield Fiduciary LLC
c/o Highbridge Capital Management, LLC
9 West 57th Street
27th Floor
New York, NY 10019

Perseverance LLC
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022

SCHEDULE B

SHARES OF SERIES B PREFERRED STOCK (AS OF THE DATE HEREOF)

HOLDER	SHARES OF SERIES B-I PREFERRED STOCK	SHARES OF SERIES B-II PREFERRED STOCK
Pine Ridge Financial, Inc.	19,000	10,000
Smithfield Fiduciary LLC	15,000	6,000
Perseverance LLC	6,000	4,000

SCHEDULE C

EXISTING WARRANTS (AS OF THE DATE HEREOF)

PINE RIDGE FINANCIAL, INC.:

DESCRIPTION	EXERCISE PRICE	EXPIRATION DATE	NUMBER OF SHARES
Warrant Agreement dated February 6, 2002	$23.99	February 6, 2007	182,927
Warrant Agreement dated February 28, 2002	$20.64	February 28, 2007	141,730
Warrant Agreement dated March 19, 2002	$23.99	March 19, 2007	56,692
		TOTAL	381,349

SMITHFIELD FIDUCIARY LLC:

DESCRIPTION	EXERCISE PRICE	EXPIRATION DATE	NUMBER OF SHARES
Warrant Agreement dated February 6, 2002	$23.99	February 6, 2007	109,756
Warrant Agreement dated February 28, 2002	$20.64	February 28, 2007	85,038
Warrant Agreement dated March 19, 2002	$23.99	March 19, 2007	42,519
		TOTAL	237,313

PERSEVERANCE LLC:

DESCRIPTION	EXERCISE PRICE	EXPIRATION DATE	NUMBER OF SHARES
Warrant Agreement dated February 6, 2002	$23.99	February 6, 2007	73,171
Warrant Agreement dated February 28, 2002	$20.64	February 28, 2007	56,692
Warrant Agreement dated March 19, 2002	$23.99	March 19, 2007	42,519
		TOTAL	172,382

SCHEDULE D

REPURCHASED SHARES (AS OF THE DATE HEREOF)

HOLDER	SHARES OF SERIES B-I PREFERRED STOCK REPURCHASED	REPURCHASE PRICE FOR SERIES B-I PREFERRED STOCK*	SHARES OF SERIES B-II PREFERRED STOCK REPURCHASED	REPURCHASE PRICE FOR SERIES B-II PREFERRED STOCK*	AGGREGATE REPURCHASE PRICE*
Pine Ridge Financial, Inc.	10,906	$9,270,100	5,741	$4,879,850	$14,149,950
Smithfield Fiduciary LLC	6,176	$5,249,600	2,471	$2,100,350	$7,349,950
Perseverance LLC	6,000	$5,100,000	4,000	$3,400,000	$8,500,000
TOTAL	23,082	$19,619,700	12,212	$10,380,200	$29,999,900

* Does not include accrued dividends.

SCHEDULE E

NEW WARRANT SHARE AMOUNTS AND EXPIRATION DATES

HOLDER	SHARE AMOUNTS*	EXPIRATION DATE
Pine Ridge Financial, Inc.	182,927	February 6, 2007
	141,730	February 28, 2007
	56,692	March 19, 2007
Smithfield Fiduciary LLC	109,756	February 6, 2007
	85,038	February 28, 2007
	42,519	March 19, 2007
Perseverance LLC	73,171	February 6, 2007
	56,692	February 28, 2007
	42,519	March 19, 2007
TOTAL	791,044	

* AMOUNT SUBJECT TO ADJUSTMENT BASED UPON ADJUSTMENT EVENTS OR EXERCISE OF WARRANTS.

SCHEDULE F

LEGAL OPINION

SCHEDULE 3.04

REQUIRED CONSENTS

SCHEDULE 5.11

Certain holders of Series B Preferred Stock have claimed that the issuance of shares of Common Stock relating to the March 31, 2003 dividend date at $2.59 per share (a price less than the initial conversion prices of the Series B-I Preferred Stock and Series B-II Preferred Stock), has caused an adjustment to the initial conversion prices of the Series B-I Preferred Stock and Series B-II Preferred Stock and to the initial exercise prices of warrants (issued in February and March of 2002) held by the holders of Series B Preferred Stock. As a result, these holders have claimed that they have a right to convert their Series B Preferred Stock at the price per share at which the Common Stock issued in payment of their Series B Preferred Stock dividends was issued.

EXHIBIT A

FORM OF NEW WARRANT

EXHIBIT B

FORM OF SERIES C NOTE

EXHIBIT C

FORM OF AMENDMENT AND TERMINATION AGREEMENT

EXHIBIT D

FORM OF VOTING AGREEMENT AND IRREVOCABLE PROXY

EXHIBIT 99.3

EXECUTION COPY

VOTING AGREEMENT

VOTING AGREEMENT (this "AGREEMENT"), dated as of June 1, 2003, by and between Aspen Technology, Inc. (the "Company") and [_____] (the "STOCKHOLDER").

W I T N E S S E T H:

WHEREAS, the Stockholder owns such number of (a) shares of Series B Preferred Stock, par value $.10 per share (the "SERIES B PREFERRED STOCK"), of the Company (b) shares of Common Stock, par value $.10 per share (the "COMMON STOCK"), of the Company and/or (c) warrants or options to purchase Common Stock, indicated next to his, her or its name on SCHEDULE A attached hereto;

WHEREAS, pursuant to a Securities Purchase Agreement entered into as of June 1, 2003 among the Company and certain other investors (including the Stockholder) (the "PURCHASE AGREEMENT"), the Company and the Stockholder have agreed to provide for certain agreements with respect to the voting and transfer of Securities (as defined in Section 9 below) owned by the Stockholder pursuant to this Agreement; and

WHEREAS, this Agreement is being entered into in order to induce the Company to enter into the Purchase Agreement and to consummate the transactions contemplated in the Purchase Agreement and Transaction Documents (as defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other, good and valuable consideration, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. AGREEMENTS TO VOTE; IRREVOCABLE PROXY.

1.1. VOTING FOR THE MATTERS TO BE CONSIDERED. Stockholder hereby agrees that, until the earliest to occur of (i) the termination of the Purchase Agreement in accordance with its terms; (ii) approval of the issuance of the Series D Preferred Stock, par value $0.10 per share, by the requisite stockholders of the Company under the Delaware General Corporation Law ("DGCL") at the Special Meeting (as defined in the Purchase Agreement) ("REQUIRED APPROVAL"); (iii) the requisite stockholders of the Company vote to reject the matters contemplated to be voted on pursuant to Section 6.05 of the Purchase Agreement under the DGCL (the "MATTERS TO BE CONSIDERED") at any meeting of the stockholders; or (iv) December 31, 2003 (the earliest to occur of (i), (ii), (iii) or (iv), the "TERMINATION DATE"), Stockholder shall:

(a) vote all Securities which are entitled to be voted under the DGCL, the Certificate of Incorporation or the By-laws to be voted at a meeting of stockholders

of the Company and which are beneficially owned (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended, "beneficially owned") by it ("VOTING SECURITIES"), in favor of the Matters to be Considered;

(b) vote all Voting Securities beneficially owned by it against any action or agreement that, to its knowledge, would result in a breach of any covenant, obligation or agreement or any representation or warranty of the Company in the Purchase Agreement; and

(c) vote all Voting Securities beneficially owned by it

against any action or agreement that would reasonably be expected to impede, interfere with, delay or postpone obtaining the Required Approval, including (i) any merger, other business combination, reorganization, consolidation, recapitalization, dissolution or liquidation involving the Company, (ii) a sale or transfer of a material amount of assets of the Company, (iii) any change in the board of directors of the Company, except in accordance with the Purchase Agreement, (iv) any change in the capitalization of the Company (except as may be permitted under the Purchase Agreement), (v) any change in the Certificate of Incorporation or By-laws, except in accordance with the Purchase Agreement, or (vi) any Alternative Transaction (as defined in the Purchase Agreement).

Stockholder hereby acknowledges receipt and review of a copy of the Purchase Agreement.

1.2. IRREVOCABLE PROXY. Contemporaneously with the execution of this Agreement, Stockholder shall deliver, or cause to be delivered, to the Company an irrevocable proxy coupled with an interest in the form attached hereto as EXHIBIT A (the "IRREVOCABLE PROXY"), which shall designate David L. McQuillin, Lisa M. Zappala and Stephen J. Doyle as named proxies (the "PROXIES") with respect to the Series B Preferred Stock held by such Stockholder. Promptly after the record date for the stockholders meeting called for the purpose of considering the Matters to be Considered, the Stockholder shall immediately deliver to the Company an Irrevocable Proxy with respect to all other Voting Securities held by such Stockholder as of the record date for such stockholders meeting. The Irrevocable Proxy (i) as to shares of Series B Preferred Stock shall be effective as of the date hereof and shall be irrevocable to the fullest extent permitted by law and (ii) as to all other Voting Securities shall be effective as of the date delivered and shall be irrevocable to the fullest extent permitted by law with respect to all Voting Securities then owned by the Stockholder.

1.3. WRITTEN CONSENTS. The provisions of this SECTION 1 shall be equally applicable to any action taken or proposed to be taken by the Company's stockholders without a meeting, including any such action taken or proposed to be taken by written consent pursuant to Section 228 of the DGCL.

2. RESTRICTIONS ON TRANSFERS OF SECURITIES. Prior to the Termination Date, Stockholder hereby agrees that it shall not Transfer, or permit the Transfer of, all or any of the Voting Securities listed on SCHEDULE A beneficially owned by it unless (a) as a condition to any such Transfer the transferee agrees to be bound by the terms and provisions of this Agreement and delivers an Irrevocable Proxy to the Company in accordance with Section 1.2 hereof and (b) such Transfer is effected in accordance with the Series B Agreement (as defined in the Purchase Agreement). No

Transfer shall be effective and the Company shall not, and shall not be compelled to, recognize any Transfer or record any Transfer on its books if such Transfer is prohibited by this Agreement, or issue any certificate representing any Securities to any Person who has received such Securities in a Transfer made in contravention of the terms of this Agreement. The parties agree that the restrictions on Transfer set forth in this Agreement are not manifestly unreasonable.

3. STOCK SPLITS. If there shall be any change in the Securities of the Company as a result of any merger, consolidation, reorganization, recapitalization, stock dividend, split-up, combination, exchange or otherwise, the provisions of this Agreement shall apply with equal force to additional and/or substitute Securities, if any, received by the Stockholder in exchange for or by virtue of its ownership of Securities.

4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.

4.1. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDER. Stockholder represents and warrants to the Company as follows:

(a) RIGHT TO VOTE SECURITIES. As of the date hereof, Stockholder beneficially owns and has the right to vote all the Securities (in accordance with the terms of such Securities) listed by its name on SCHEDULE A.

(b) POWER; BINDING AGREEMENT; NON-CONTRAVENTION. Stockholder has the full, right, power and authority (or, if a natural person, the legal capacity) to enter into this Agreement and perform all of its obligations hereunder. Neither the execution, delivery nor performance of this Agreement by Stockholder will violate the charter, by-laws or other organizational or constitutive documents of Stockholder (if the Stockholder is not a natural person), or any other agreement, contract or arrangement to which Stockholder is a party or is bound, including any voting agreement, stockholders agreement or voting trust. This Agreement has been duly executed and delivered by Stockholder and constitutes a legal, valid and binding agreement of the Stockholder, enforceable in accordance with its terms. Neither the execution or delivery of this Agreement will (a) require any material consent or approval of or filing with any governmental or other regulatory body, other than filings required under the federal or state securities laws, or (b) constitute a violation of, conflict with or constitute a default under (i) any material law, rule or regulation applicable to Stockholder, or (ii) any material order, judgment or decree to which Stockholder is bound.

4.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants to the Stockholder that the Company has the full, right, power and authority to enter into this Agreement and perform all of its obligations hereunder. Neither the execution, delivery nor performance of this Agreement by the Company will violate the charter, by-laws or other organizational or constitutive documents of the Company, or any other agreement, contract or arrangement to which the Company is a party or is bound. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable in accordance with its terms. Neither the execution or delivery of this Agreement will (a) require any material consent or approval of or filing with any governmental or other regulatory body, other than filings required under the

federal or state securities laws, or (b) constitute a violation of, conflict with or constitute a default under (i) any material law, rule or regulation applicable to the Company, or (ii) any material order, judgment or decree to which the Company is bound.

5. TERMINATION. This Agreement shall terminate on the earlier to occur of (i) the Termination Date and (ii) the date specified by mutual agreement of the Stockholder and the Company.

6. STOCKHOLDER COVENANTS. Except in accordance with the express provisions of this Agreement, Stockholder agrees not to, directly or indirectly, grant any proxies, deposit any Securities into a voting trust or enter into any other voting agreement with respect to any Securities.

7. COMPANY COVENANTS. The Company agrees that it will only exercise the rights granted to it under this Agreement with respect to the subject matter hereof, and that it will use its commercially reasonable efforts to ensure that the Proxies exercise the Irrevocable Proxy, in a manner consistent with this Agreement.

8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. Except as expressly set forth herein, the representations, warranties, covenants and agreements made by Stockholder, or the Company in this Agreement shall survive the date hereof and shall remain in full force and effect until the termination of this Agreement in accordance with Section 5 above.

9. CERTAIN DEFINITIONS.

9.1. "PERSON" means any individual, corporation, partnership, firm, joint venture, limited liability company or partnership, association,

joint-stock company, trust, unincorporated organization or Governmental Body.

9.2. "SECURITIES" means and include (a) all shares of the common stock and preferred stock of the Company, (b) all options, warrants or rights to acquire shares of common stock or preferred stock, (c) all securities which are convertible into or exchangeable or exercisable for, common stock or preferred stock, (d) all other securities of the Company which may be issued in exchange for or in respect of shares of common stock or preferred stock (whether by way of stock split, stock dividend, combination, reclassification, reorganization or any other means), and (e) any other Voting Securities of the Company acquired by Stockholder after the date hereof.

9.3. "TRANSFER" means any transfer of Securities, whether by sale, assignment, gift, will, devise, bequest, operation of the laws of descent and distribution, or in trust, pledge, hypothecation, mortgage, encumbrance or other disposition (the verb to "TRANSFER" shall mean to sell, assign, give, dispose, transfer (including by gift, will, devise, bequest, or operation of laws of descent and distribution, or in trust), pledge, hypothecate, mortgage, or encumber).

10. ENTIRE AGREEMENT; AMENDMENT. This Agreement, together with the Irrevocable Proxy, Purchase Agreement and Transaction Documents, constitute the entire agreement among the parties hereto with respect to the subject matter contained herein and

supersede all prior agreements and understandings among the parties with respect to such subject matter (including any agreements between Stockholder and the Company regarding the voting of Securities.) This Agreement may not be modified, amended, altered or supplemented except by an agreement in writing executed by the party against whom such modification, amendment, alteration or supplement is sought to be enforced.

11. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties; provided that, Stockholder may assign this Agreement in connection with any Transfer permitted by this Agreement.

12. GOVERNING LAW; CONSENT TO JURISDICTION. Except as expressly set forth below, this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

13. INJUNCTIVE RELIEF. The parties agree that in the event of a breach of any provision of this Agreement, the aggrieved party may be without an adequate remedy at law. The parties therefore agree that in the event of a breach of any provision of this Agreement, the aggrieved party shall be entitled to seek in any court of competent jurisdiction a decree of specific performance or to enjoin the continuing breach of such provision, in each case without the requirement that a bond be posted, as well as to obtain damages for breach of this Agreement. By seeking such relief, the aggrieved party will not be precluded from seeking any other relief to which it may be entitled.

14. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in any number of counterparts (including by facsimile signature), each of which shall be deemed to be an original and all of which together shall constitute one and the same documents.

15. SEVERABILITY. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or

provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

16. FURTHER ASSURANCES. Each party hereto shall execute and deliver such additional documents as may be necessary to effectuate the voting agreements contemplated by this Agreement.

17. NO THIRD PARTY BENEFICIARIES; NO PARTNERSHIP OR FIDUCIARY RELATIONSHIP. Nothing in this Agreement, expressed or implied, shall be construed to give any Person, other than the parties hereto, any legal or equitable right, remedy or claim under or by reason of this Agreement or any provision contained herein. Nothing in this Agreement shall create, or is intended to create, a fiduciary relationship between Stockholder and the Company or a partnership or similar arrangement between the Stockholder and the Company.

18. LEGAL EXPENSES. In the event any legal proceeding is commenced by any party to this Agreement to enforce, or recover damages for any breach of, the provisions hereof, the prevailing party in such legal proceeding shall be entitled to recover in such legal proceeding from the losing party such prevailing party's costs and expenses incurred in connection with such legal proceedings, including reasonable attorneys fees and disbursements.

19. [FIDUCIARY DUTIES. Stockholder is signing this Agreement solely in such Stockholder's capacity as an owner of his or her respective Voting Securities, and nothing herein shall prohibit, prevent or preclude such Stockholder from taking or not taking any action in his or her capacity as an officer or director of the Company.] [INCLUDED IN ENTITY AGREEMENTS ONLY]

20. INTERPRETATION. Unless the context of this Agreement otherwise requires, (i) words of any gender include each gender and the neuter; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the term "Section" refers to the specified Section of this Agreement; and (v) the term "including" or similar words shall be construed as to refer to such matter without limitation thereof. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Voting Agreement to be executed as of the date and year first above written.

ASPEN TECHNOLOGY, INC.

By: _____

Name:
Title:

STOCKHOLDER:

_____

Name:

EXHIBIT A

FORM OF IRREVOCABLE PROXY

Reference is made to that certain Voting Agreement, dated as of the date hereof (the "VOTING Agreement"), by and between Aspen Technology, Inc., a Delaware corporation (the "COMPANY) and the undersigned stockholder of the Company. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the Voting Agreement.

The undersigned hereby irrevocably (to the fullest extent permitted by Delaware law) appoints and constitutes each of David L. McQuillin, Lisa M. Zappala and Stephen J. Doyle the attorney and proxy of the undersigned with full power of substitution and resubstitution, to the full extent of the undersigned's rights with respect to all Voting Securities owned of record by the undersigned as of the date of this proxy (the "SUBJECT SHARES") to vote such Subject Shares for, and only in connection with, and in favor of, the Matters to be Considered. All prior proxies given by the undersigned with respect to any of the Subject Shares are hereby revoked, and no subsequent proxies will be given with respect to any of the Subject Shares.

This proxy is IRREVOCABLE, IS COUPLED WITH AN INTEREST and is granted in connection with the Voting Agreement, a copy of which is attached hereto and made a part hereof and is granted in consideration of the Company entering into the Purchase Agreement.

Each attorney and proxy named above will be empowered, and may exercise this proxy, to vote the Subject Shares, at any time and from time to time, in his or her sole and absolute discretion consistent with the terms of Section 1.1, at any meeting of the stockholders of the Company, however called, or in any written action by consent of stockholders of the Company, with respect to any and all matters brought before the stockholders with respect to the matters set forth in Section 1.1.

This proxy shall be binding upon the heirs, successors and assigns of the undersigned.

Any term or provision of this proxy which is invalid or unenforceable, in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this proxy or affecting the validity or enforceability of any of the terms or provisions of this proxy in any other jurisdiction. If any provision of this proxy is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

[REMINDER OF PAGE INTENTIONALLY LEFT BLANK]

This proxy shall terminate immediately upon the termination of the Voting Agreement pursuant to Section 5 thereof.

Dated: _____, 2003

Name:

By:

Name:
Title:

Number of shares of Common Stock,
par value $.10 per share, of the Company
owned of record as of the date of this proxy: _____

Number of shares of Series B Preferred Stock,
par value $.10 per share, of the Company
owned of record as of the date of this proxy: _____

SIGNATURE PAGE TO IRREVOCABLE PROXY

SCHEDULE A

OWNERSHIP OF SECURITIES

	COMMON STOCK		SERIES B PREFERRED STOCK	
NAME OF STOCKHOLDER	NUMBER OF SHARES	RIGHT TO ACQUIRE	SERIES B-I NUMBER OF SHARES	SERIES B-II NUMBER OF SHARES
Pine Ridge Financial, Inc.				
Smithfield Fiduciary LLC				
Perseverance LLC				
Lawrence B. Evans				
David L. McQuillin				
Lisa W. Zappala				
Douglas R. Brown				
Stephen J. Doyle				
Greasham T. Brebach, Jr.				
Joan C. McArdle				
Stephen L. Brown				
Stephen M. Jennings				

EXHIBIT 99.4

INVESTOR RIGHTS AGREEMENT

BY AND AMONG

ASPEN TECHNOLOGY, INC.

AND

THE STOCKHOLDERS NAMED HEREIN

DATED , 2003

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INVESTOR RIGHTS AGREEMENT

THIS AGREEMENT dated as of , 2003 is entered into by and among Aspen Technology, Inc., a Delaware corporation (the "Company"), and the entities listed on the signature pages hereto (the "Investors").

BACKGROUND

A. The Company and certain of the Investors have entered into a Securities Purchase Agreement dated as of June 1, 2003, pursuant to which such Investors are acquiring shares of Series D Convertible Preferred Stock of the Company contemporaneously with the execution and delivery of this Agreement.

B. Under Sections 7.01(m) and 7.02(i) of such Purchase Agreement, the delivery of this Agreement is a condition to certain Investors' acquisition, and the Company's sale, of such shares of Series D Convertible Preferred Stock.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set

forth herein, the parties hereto agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the indicated meanings:

"ACCREDITED INVESTOR" means each Investor that is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act.

"ADVENT" means Advent International Corporation, a Delaware corporation.

"ADVERSE DISCLOSURE" means public disclosure of material non-public information, which disclosure in the good faith judgment of the Board of Directors of the Company (after consultation with external legal counsel) (i) would be required to be made in any Registration Statement so that such Registration Statement would not be materially misleading, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement, and (iii) would be materially detrimental to the Company's ability to effect a material proposed merger, acquisition or sale.

"AFFILIATE" of a Person shall mean any Person which, directly or indirectly, controls, is controlled by, or is under common control with such Person. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to elect a majority of the board of directors (or other governing body) or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise and, in any event and without limiting the generality of the foregoing, any Person owning more than 10% of the voting securities of another Person shall be deemed to control that Person. With respect to each of the initial Series D-1 Investors, the term "Affiliate" shall also include (i) any entity in which such Series D-1 Investor (or one of its Affiliates) is a general partner or member, (ii) each investor in such Series D-1 Investor, but only in connection with the liquidation, winding up or dissolution of the Series D-1 Investor, and only to the extent of such investor's pro rata share in the Series D-1 Investor and (iii) any investment fund managed by Advent.

"BENEFICIALLY OWN" has the meaning set forth in Rule 13d-3 under the Exchange Act, and

"BENEFICIAL OWNERSHIP" shall have a correlative meaning.

"COMMISSION" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act.

"COMMON STOCK" means the common stock, par value $.10 per share, of the Company, or any common stock or other securities issued in respect of such Common Stock, or into which such Common Stock is converted, due to stock splits, stock dividends or other distributions, merger, consolidation, reclassifications, recapitalizations or otherwise.

"COMPANY" has the meaning ascribed to it in the introductory paragraph hereto.

"COMPANY OFFER" means a written notice of any proposed issuance, sale or exchange of Company-Offered Securities containing the information specified in Section 3.1(a).

"COMPANY-OFFER ACCEPTANCE" means a written notice from an Investor to the Company containing the information specified in Section 3.1(b).

"COMPANY-OFFER AVAILABLE UNSUBSCRIBED AMOUNT" means the difference

between the total of all of the Company-Offer Basic Amounts available for purchase by Accredited Investors pursuant to Section 3.1 and the Company-Offer Basic Amounts subscribed for pursuant to Section 3.1.

"COMPANY-OFFER BASIC AMOUNT" means, with respect to an Accredited Investor, its pro rata portion of the Company-Offered Securities determined by multiplying the number of Company-Offered Securities by a fraction, the numerator of which is the aggregate number of shares of Common Stock then held by such Accredited Investor (giving effect to the conversion into Common Stock of all shares of convertible preferred stock and exercise of all warrants (assuming cashless exercise) then held by such Accredited Investor) and the denominator of which is the total number of shares of Common Stock then outstanding (giving effect to (i) the conversion into Common Stock of all outstanding shares of convertible preferred stock, (ii) the exercise of all outstanding options to purchase shares of Common Stock issued under employee stock plans of the Company, and (iii) the shares issuable pursuant to the cashless exercise of warrants to the extent included in the numerator, in the case of (i) and (ii), which have been approved by a majority of the Independent Directors and that are then convertible or exercisable at an exercise price less than the then-current market price of the Common Stock).

"COMPANY-OFFER REFUSED SECURITIES" means those Company-Offered Securities as to which a Company-Offer Acceptance has not been given by Accredited Investors pursuant to Section 3.1.

"COMPANY-OFFER UNSUBSCRIBED AMOUNT" means, with respect to an Accredited Investor, any additional portion of the Company-Offered Securities attributable to the Company-Offer Basic Amounts of other Accredited Investors as such Accredited Investor indicates it will purchase or acquire should the other Accredited Investors subscribe for less than their Company-Offer Basic Amounts.

"COMPANY-OFFERED SECURITIES" means (a) any shares of Common Stock, (b) any other equity securities of the Company, including shares of preferred stock, (c) any option, warrant or other right to subscribe for, purchase or otherwise acquire any equity securities of the Company, or (d) any debt securities convertible into capital stock of the Company.

"COMPANY SALE" means:

(a) a merger, consolidation, recapitalization, reorganization or other transaction in which (i) the Company is a constituent party, or (ii) a Subsidiary is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation, recapitalization, reorganization or other transaction except any such merger or consolidation involving the Company or a Subsidiary in which the holders of capital stock of the Company immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation more than 50% by voting power of the capital stock of or ownership interest in (a) the surviving or resulting entity or (b) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving or resulting entity; or

(b) the sale, in a single transaction or series of related transactions, (i) by the Company of all or substantially all the assets of the Company (except where such sale is to a wholly owned subsidiary of the Company) or (ii) by the stockholders of the Company of more than 50% by voting power of the then-outstanding capital stock of the Company.

"COMPETITOR" shall mean (a) any Person (i) that itself or together

with its Affiliates, derives any portion of its business revenues from developing, maintaining, supporting, marketing, licensing, selling, implementing, training or providing other services related to software products or services used in the process industries, including without limitation, the oil and gas, refining, petrochemical, chemical or pharmaceutical businesses and (ii) to which the Company is then selling or providing, or has previously sold or provided at any time within the past two (2) years, any of the products or services described in the preceding clause (i), and (b) with respect to Series D-1 Investors, any institutional investor that owns 10% or more of the publicly traded stock of a Person described in clause (a) above or 30% or more of the privately owned equity interests of a Person described in clause (a) above.

"CONFIDENTIAL INFORMATION" means any information that is labeled as confidential, proprietary or secret that an Investor obtains from the Company pursuant to financial statements, reports and other materials provided by the Company to such Investor pursuant to this Agreement.

"CONVERTIBLE DEBENTURES" means the Company's 5 1/4% Convertible Subordinated Debentures due June 15, 2005.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and the rules and regulations promulgated thereunder or in connection therewith, all as the same shall be in effect from time to time.

"INDEMNIFIED PERSON" means a Person entitled to indemnification pursuant to Section 2.6.

"INDEMNIFYING PERSON" means a Person obligated to provide indemnification pursuant to Section 2.6.

"INDEPENDENT DIRECTOR" means, as of a given time, a director of the Company who is eligible to serve on the Audit Committee of the Board of Directors of the Company under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or such other exchange, market or trading or quotation facility on which the Common Stock is then listed).

"INVESTOR" means each Person listed on the signature pages hereto and each other Person to which Shares are Transferred pursuant to Section 5.2(c) or (d), PROVIDED that such Person delivers in accordance with such Section a written instrument agreeing to be bound by the terms of this Agreement.

"OTHER REGISTRATION RIGHTS" means written agreements entered into after the date hereof under which the Company agrees to include securities of the Company (other than Registrable Shares) in a Registration Statement, PROVIDED that "Other Registration Rights" shall not include any such agreement to the extent it relates solely to securities of the Company issued in connection with the acquisition by the Company or any Subsidiary of all or a majority of the equity or assets of any entity or line of business.

"OTHER REGISTRATION RIGHTS HOLDERS" means holders of securities subject to Other Registration Rights.

"PERSON" means an individual or a corporation, partnership, limited liability company, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"PROSPECTUS" means the prospectus included in any Registration Statement, as amended or supplemented by an amendment or prospectus supplement, including post-effective amendments, and all material

incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"PURCHASE AGREEMENT" means the Securities Purchase Agreement dated as of June 1, 2003 by and among the Company and the Investors.

"REGISTRABLE SHARES" means, collectively, Series D-1 Registrable Shares and Series D-2 Registrable Shares.

"REGISTRATION EXPENSES" means all expenses incurred by the Company in complying with the provisions of Section 2, including all registration and filing fees, exchange listing fees, printing expenses, fees and expenses of counsel for the Company and the fees and expenses of Registration Selling Investor Counsel, state Blue Sky fees and expenses, and the expense of any special audits incident to or required by any such registration, but excluding underwriting discounts, selling commissions and the fees and expenses of Registration Selling Investors' own counsel (other than Registration Selling Investor Counsel).

"REGISTRATION INITIATING INVESTORS" means the Series D-1 Investors initiating a request for registration pursuant to Section 2.1(a).

"REGISTRATION SELLING INVESTOR" means any Investor owning Registrable Shares included in a Registration Statement.

"REGISTRATION SELLING INVESTOR COUNSEL" means (a) if Advent or one of its Affiliates is participating as a Registration Selling Investor with respect to a registration, counsel selected by Advent to represent all Registration Selling Investors with respect to such registration, or (b) if Advent or one of its Affiliates is not participating as a Registration Selling Investor with respect to a registration, counsel selected by the holders of a majority of the Registrable Shares to be included in such registration to represent all Registration Selling Investors with respect to such registration.

"REGISTRATION STATEMENT" means a registration statement filed by the Company with the Commission for a public offering and sale of securities of the Company, other than (a) a registration statement on Form S-4 or Form S-8, or their successors, or any other form for a similar limited purpose, or (b) any registration statement covering only securities proposed to be issued in exchange for securities or assets of another corporation.

"REMAINING INVESTOR-OFFERED SHARES" has the meaning ascribed to it in Section 4.2(b).

"RULE 144" means Rule 144 promulgated under the Securities Act, and any successor rule or regulation thereto, and in the case of any referenced section of such rule, any successor section thereto, collectively and as from time to time amended and in effect.

"SECURITIES ACT" means the Securities Act of 1933, as amended, and any successor thereto, and the rules and regulations promulgated thereunder or in connection therewith, all as the same shall be in effect from time to time.

"SERIES D CERTIFICATE" means the Certificate of Designations of Series D-1 Convertible Preferred Stock and Series D-2 Convertible Preferred Stock forming a part of the Certificate of Incorporation of the Company.

"SERIES D-1 DIRECTORS" means the members of the Board of Directors of the Company elected by the holders of shares of Series D-1 Stock pursuant to the Series D Certificate.

"SERIES D-1 INVESTORS" means those Investors to the extent they hold Series D-1 Registrable Shares, which initially shall consist of the

entities identified on the signature pages hereto as Series D-1 Investors.

"SERIES D-1 REGISTRABLE SHARES" means (a) the shares of Common Stock issued or issuable upon conversion of the Series D-1 Stock, (b) any other shares of Common Stock, and any shares of Common Stock issued or issuable upon the conversion or exercise of any other securities, acquired by the Series D-1 Investors pursuant to Section 3, (c) the shares of Common Stock issued or issuable upon the exercise of Series D-1 Warrants, and (d) any other shares of Common Stock issued in respect of such shares; PROVIDED, HOWEVER, that shares of Common Stock that are Series D-1 Registrable Shares shall cease to be Series D-1 Registrable Shares upon any sale pursuant to a Registration Statement or Rule 144 or at such time at which such Series D-1 Registrable Shares may be sold pursuant to paragraph (k) of Rule 144.

"SERIES D-1 STOCK" means the Series D-1 Convertible Preferred Stock of the Company issued pursuant to the Purchase Agreement.

"SERIES D-1 WARRANTS" means the warrants being issued on the date hereof to Series D-1 Investors pursuant to the Purchase Agreement.

"SERIES D-2 INVESTORS" means those Investors to the extent they hold Series D-2 Registrable Shares, which initially shall consist of the entities identified on the signature pages hereto as Series D-2 Investors.

"SERIES D-2 REGISTRABLE SHARES" means (a) the shares of Common Stock issued or issuable upon conversion of the Series D-2 Stock, (b) any other shares of Common Stock, and any shares of Common Stock issued or issuable upon the conversion or exercise of any other securities, acquired by the Series D-2 Investors pursuant to Section 3, (c) the shares of Common Stock issued or issuable upon the exercise of the Series D-2 Warrants, and (d) any other shares of Common Stock issued in respect of such shares; PROVIDED, HOWEVER, that shares of Common Stock that are Series D-2 Registrable Shares shall cease to be Series D-2 Registrable Shares upon any sale pursuant to a Registration Statement or Rule 144 or at such time as when such Series D-2 Registrable Shares may be sold pursuant to paragraph (k) of Rule 144.

"SERIES D-2 SECURITIES" means the Series D-2 Stock and the shares of Common Stock issuable

upon conversion thereof or as payment of dividends thereon.

"SERIES D-2 STOCK" means the Series D-2 Convertible Preferred Stock of the Company issued pursuant to the Series D Certificate.

"SERIES D-2 WARRANTS" means the warrants being issued on the date hereof to Series D-2 Investors pursuant to the Purchase Agreement and the warrants issued to the Series D-2 Investors pursuant to the Repurchase and Exchange Agreement, dated as of June 1, 2003, by and among the Company and the Series D-2 Investors.

"SHARES" means, collectively, shares of Series D-1 Stock and Series D-2 Stock held by the Investors.

"SHELF REGISTRATION STATEMENT" means a Registration Statement filed by the Company with the Commission pursuant to Section 2.4 covering the resale of all Series D-2 Registrable Shares for an offering to be made on a continuous basis pursuant to Rule 415 promulgated under the Securities Act.

"SUBSIDIARY" means any corporation or other entity of which the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is at the time directly or indirectly owned by the Company.

"TRADING DAY" means (a) any day on which the Common Stock is listed or quoted and traded on the Nasdaq National Market, the New York Stock Exchange, the American Stock Exchange or the Nasdaq SmallCap Market or (b) if the Common Stock is not traded on any such market, then a day on which trading occurs on the New York Stock Exchange (or any successor thereto).

"TRANSFER" means, as the context requires, (a) any sale, transfer, distribution or other disposition, whether voluntarily or by operation of law, or (b) the act of effecting such a sale, transfer, distribution or other disposition.

2. REGISTRATION RIGHTS

2.1. DEMAND REGISTRATIONS

(a) One or more Series D-1 Investors may, at any time, request, in writing, that the Company file a Registration Statement to effect the registration of an offering of Series D-1 Registrable Shares owned by such Series D-1 Investor(s) and having an aggregate value of at least $10,000,000, based on the last reported sale price of the Common Stock on the trading day immediately preceding the date of such request. If the Company files a Registration Statement on Form S-3 (or any successor form) pursuant to this Section 2.1(a), the Company shall set forth therein any information that may be required in a registration that is filed on Form S-1 and that the underwriter lead managing the offering requests be expressly included in the Registration Statement.

(b) Upon receipt of any request for registration pursuant to this Section 2, the Company shall promptly (but in any event within five days) give written notice of such proposed registration to all other Series D-1 Investors. Such other Series D-1 Investors shall have the right, by giving written notice to the Company within 20 days after the Company provides its notice, to elect to have included in such registration such of their Series D-1 Registrable Shares as such Series D-1 Investors may request in such notice of election, subject in the case of an

underwritten offering to the terms of Section 2.1(c). Thereupon, the Company shall, as expeditiously as possible, use all commercially reasonable efforts to effect the registration on an appropriate registration form of all Series D-1 Registrable Shares that the Company has been requested to so register.

(c) If the Registration Initiating Investors intend to distribute the Series D-1 Registrable Shares covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1(a) and the Company shall include such information in its written notice referred to in Section 2.1(b). In such event, (i) the right of any other Series D-1 Investor to include its Series D-1 Registrable Shares in such registration pursuant to Section 2.1(a) shall be conditioned upon such other Series D-1 Investor's participation in such underwriting on the terms set forth herein, and (ii) all Series D-1 Investors including Series D-1 Registrable Shares in such registration shall enter into an underwriting agreement upon customary terms with the underwriter or underwriters managing the offering; PROVIDED that such underwriting agreement shall not provide for indemnification or contribution obligations on the part of the Series D-1 Investors materially greater than the obligations of the Series D-1 Investors pursuant to Section 2.7. The Company shall have the right to select the managing underwriter(s) for any underwritten offering requested pursuant to Section 2.1(a), which selection must be made out of a pool of three underwriting firms chosen by the Company and the Registration Initiating Investors,

each of which firms shall have a national reputation and experience with software companies. If any Series D-1 Investor that has requested inclusion of its Series D-1 Registrable Shares in such registration as provided above disapproves of the terms of the underwriting, such Person may elect, by written notice to the Company, to withdraw its Series D-1 Registrable Shares from such Registration Statement and underwriting. If the lead managing underwriter advises the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Series D-1 Registrable Shares to be included in the Registration Statement and underwriting shall be allocated among all Series D-1 Investors requesting registration in proportion, as nearly as practicable, to the respective number of Series D-1 Registrable Shares each Series D-1 Investor has requested be included in such registration.

(d) The Company shall not be required to effect more than a total of four registrations requested pursuant to Section 2.1(a). The Series D-1 Investors shall not deliver a notice pursuant to Section 2.1(a) requesting registration of any underwritten offering until at least 18 months after the closing of any prior underwritten offering registered pursuant to a request under Section 2.1(a). For purposes of this Section 2.1(d), a Registration Statement shall not be counted until such time as such Registration Statement has been declared effective by the Commission. If the Registration Initiating Investors withdraw their request for such registration, it shall not count as a Registration Statement if the Registration Initiating Investors pay the Registration Expenses therefor pursuant to Section 2.6. Notwithstanding the foregoing, any request withdrawn by the Registration Initiating Investors as a result of information concerning the business or financial condition of the Company, where such information is made known to the Series D-1 Investors after the date on which such registration was requested, shall not count as a Registration Statement.

(e) If at the time of any request to register Series D-1 Registrable Shares by Registration Initiating Investors pursuant to this Section 2.1, the Company is engaged or has plans to engage in a registered public offering or is engaged in a material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction that, in the good faith determination of the Company's Board of Directors, would be adversely affected by the requested registration, then the Company may at its option direct that such request be delayed

for a period not in excess of 30 days from the date of such request, such right to delay a request to be exercised by the Company not more than once in any 12-month period.

2.2. INCIDENTAL REGISTRATIONS

(a) Whenever the Company proposes to file a Registration Statement covering shares of Common Stock (other than a Registration Statement filed (i) pursuant to Section 2.1, 2.3 or 2.4, (ii) in accordance with the requirements of a written agreement entered into prior to the date hereof, (iii) with respect to shares issued by the Company in connection with an acquisition by the Company or any Subsidiary of all or a majority of the equity or assets of any entity, or (iv) with respect to a so-called "private investment, public equity" (a/k/a "PIPE") offering of Company-Offered Securities to which the provisions of Section 3.1 apply, except in any such case to the extent expressly permitted therein) at any time and from time to time, it will, prior to such filing, give written notice to all Series D-1 Investors of its intention to do so; PROVIDED that no such notice need be given if no Series D-1 Registrable Shares are to

be included therein as a result of a written notice from the managing underwriter pursuant to Section 2.2(b). Upon the written request of a Series D-1 Investor or Series D-1 Investors given within 10 days after the Company provides such notice (which request shall state the intended method of disposition of such Series D-1 Registrable Shares), the Company shall use all commercially reasonable efforts to cause all Series D-1 Registrable Shares that the Company has been requested by such Series D-1 Investor or Series D-1 Investors to register to be registered under the Securities Act to the extent necessary to permit their sale or other disposition in accordance with the intended methods of distribution specified in the request of such Series D-1 Investor or Series D-1 Investors; PROVIDED that the Company shall have the right to postpone or withdraw any registration effected pursuant to this Section 2.2 without obligation upon 10 days' advance written notice to the Series D-1 Investors. Upon receipt of such notice, the Series D-1 Investors may elect to exercise their right to demand a registration in accordance with Section 2.1.

(b) If the registration for which the Company gives notice pursuant to Section 2.2(a) is a registered public offering involving an underwriting, the Company shall so advise the Series D-1 Investors as a part of the written notice given pursuant to Section 2.2(a). In such event, (i) the right of any Series D-1 Investor to include its Series D-1 Registrable Shares in such registration pursuant to this Section 2.2 shall be conditioned upon such Series D-1 Investor's participation in such underwriting on the terms set forth herein and (ii) all Series D-1 Investors including Series D-1 Registrable Shares in such registration shall enter into an underwriting agreement upon customary terms with the underwriter or underwriters selected for the underwriting by the Company. If any Series D-1 Investor who has requested inclusion of its Series D-1 Registrable Shares in such registration as provided above disapproves of the terms of the underwriting, such Person may elect, by written notice to the Company, to withdraw its shares from such Registration Statement and underwriting. If the managing underwriter advises the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the shares held by holders other than the Series D-1 Investors and Other Registration Rights Holders shall be excluded from such Registration Statement and underwriting to the extent deemed advisable by the managing underwriter, and if a further reduction of the number of shares is required, the number of shares that may be included in such Registration Statement and underwriting shall be allocated among all Series D-1 Investors and Other Registration Rights Holders requesting registration in proportion, as nearly as practicable, to the respective number of shares of Common Stock (on an as converted basis) held by them on the date the Company gives the notice specified in Section 2.2(a). If any Series D-1 Investor or Other Registration Rights Holder would thus be entitled to include more

shares than such holder has requested to be registered, the excess shall be allocated among other requesting Series D-1 Investors and Other Registration Rights Holders pro rata in the manner described in the preceding sentence.

2.3. DIVIDEND REGISTRATION. For so long as it is required by the terms of the Series D Certificate, shares of Common Stock issued in payment of dividends on the Shares shall be, at the time such shares are issued, registered for resale for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act. Whenever the Company proposes to file a Registration Statement covering shares of Common Stock to be issued in payment of dividends on Shares, it will, prior to such filing, give written notice to all Investors of its intention to do so. Upon issuance, such shares shall constitute Registrable Shares in accordance

with the definition thereof in Section 1. The Company shall cause all such Registrable Shares to be registered under the Securities Act to permit their sale or other disposition by any methods of distribution reasonably requested by the Investors, other than by means of an underwriting.

2.4. SHELF REGISTRATION. The Company shall prepare and file with the Commission a Shelf Registration Statement as promptly as practicable after the date hereof and shall take such steps as are necessary to enable the Shelf Registration to be declared effective by the Commission as promptly as practicable after the date hereof (and in any event by no later than 90 days after the date of this Agreement or, if the Shelf Registration Statement (including any of the documents incorporated by reference therein) is the subject of a complete or partial review by the Commission, in any event by no later than 120 days after the date of this Agreement). The Shelf Registration Statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Series D-2 Registrable Shares on Form S-3, in which case such Shelf Registration Statement shall be on such other form as the Company is eligible to use) and shall contain the "Plan of Distribution" attached hereto as ANNEX A. The Company shall notify each Series D-2 Investor in writing promptly (in any event within one Trading Day) after receiving notification from the Commission that the Shelf Registration Statement has been declared effective.

2.5. REGISTRATION PROCEDURES

(a) If and whenever the Company is required by the provisions of this Agreement to use all commercially reasonable efforts to effect the registration of any Registrable Shares under the Securities Act, the Company shall:

(i) prepare and file with the Commission a Registration Statement with respect to such Registrable Shares (which, in the case of the Series D-2 Registrable Shares, shall be the Shelf Registration Statement) and use all commercially reasonable efforts to cause that Registration Statement to become effective as soon as possible;

(ii) not less than three Trading Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to the each Registration Selling Investor and its counsel copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Registrable Selling Investor and its counsel, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act;

and the Company shall not file any Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Registrable Selling Investors holding a

majority of the Registrable Securities to be registered thereunder and their counsel shall reasonably object, PROVIDED that such objection is communicated to the Company within three Trading Days of receipt of such documents;

(iii) as expeditiously as possible prepare and file with the Commission any amendments and supplements to the Registration Statement and the prospectus included in the Registration Statement as may be necessary to comply with the provisions of the Securities Act (including the anti-fraud provisions thereof) and use all commercially reasonable efforts to keep the Registration Statement continuously effective:

(A) in the case of a shelf registration of an offering of Series D-1 Registrable Shares on a continuous basis under Rule 415 under the Securities Act for 180 days from the effective date or such lesser period until all such Registrable Shares are sold,

(B) in the case of a Registration Statement filed pursuant to Section 2.3 with respect to shares of Common Stock paid as dividends on the Shares, for (1) 45 days from the date such dividends were issued, if such dividends represent no more than one year's accumulated dividends on the Shares, (2) 90 days from the date such dividends were issued, if such dividends represent more than one year's accumulated dividends on the Shares or (3) such lesser period until all such shares of Common Stock are sold,

(C) in the case of the Shelf Registration Statement filed pursuant to Section 2.4, until the earliest of (1) the second anniversary of the date hereof, (2) the date on which all of the Series D-2 Registrable Shares covered by the Shelf Registration Statement have been sold, and (3) the date on which all of such Series D-2 Registrable Shares may be sold pursuant to paragraph (k) of Rule 144 (assuming utilization of any cashless exercise feature of any securities), as determined by the Company after consultation with legal counsel; PROVIDED that if the Company ceases to keep the Registration Statement effective by reason of Section 2.5(a)(iii)(C)(3), the Company must certify to the Series D-2 Investors that the Series D-2 Registrable Shares may be sold pursuant to paragraph (k) of Rule 144 (assuming utilization of any cashless exercise feature of any securities), and

(D) in the case of all other registrations, for (1) 45 days from the effective date or such greater period, up to 120 days, as an underwriter may require, or (2)

such lesser period until all such Registrable Shares are sold;

PROVIDED that the number of days specified in the foregoing clauses (A), (B) and (D) shall not include any day on which a Registration Selling Investor is restricted from offering or selling Registrable Shares pursuant to Section 2.5(b) or 2.5(c) below.

(iv) in all cases respond as promptly as reasonably possible to any comments

received from the Commission with respect to any Registration Statement or any amendment thereto and as promptly as reasonably possible provide to the counsel for the Registration Selling Investors true and complete copies of all correspondence from and to the Commission relating to the applicable Registration Statement;

(v) as expeditiously as possible furnish to each Registration Selling Investor and its counsel, without charge, at least one conformed copy of the applicable Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission;

(vi) as expeditiously as possible furnish to each Registration Selling Investor (with a copy to counsel to such Registration Selling Investors) such reasonable numbers of copies of the Prospectus, including any preliminary Prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Registration Selling Investor may reasonably request in order to facilitate the public sale or other disposition of the Registrable Shares owned by such Registration Selling Investor; and the Company hereby consents to the use of any such Prospectus and each amendment or supplement thereto by each Registration Selling Investor in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto;

(vii) use all commercially reasonable efforts to avoid the issuance of or, if issued, obtain the withdrawal of (x) any order suspending the effectiveness of any Registration Statement or (y) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction as soon as reasonably practicable;

(viii) as expeditiously as possible (and in the case of the Shelf Registration Statement, prior to

the public offering of Registrable Securities pursuant thereto) use all commercially reasonable efforts to register or qualify the Registrable Shares covered by the Registration Statement under the securities or Blue Sky laws of such states as the Registration Selling Investors shall reasonably request, and do any and all other acts and things that may be necessary or desirable to enable the Registration Selling Investors to consummate the public sale or other disposition in such states of the Registrable Shares owned by the Registration Selling Investors; PROVIDED, HOWEVER, that the Company shall not be required in connection with this paragraph (viii) to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction;

(ix) as expeditiously as possible, cause all such Registrable Shares to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(x) promptly provide a transfer agent and registrar for all such Registrable Shares not later than the effective date of such registration statement;

(xi) cooperate with the Registration Selling Investors to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to an effective Registration Statement, which certificates shall be free, to the extent permitted hereunder, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Registration Selling Investors may request;

(xii) promptly make available for inspection by the Registration Selling Investors, any managing underwriter participating in any disposition pursuant to such Registration Statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the Registration Selling Investors, all financial and other records, pertinent corporate documents and properties of the Company and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement; provided that the Company will not make available to any Series D-2 Investor material nonpublic information;

(xiii) in connection with an underwritten disposition of Registrable Shares, provide such reasonable assistance in the marketing of the Registrable

Shares as is customary of issuers in primary underwritten public offerings (including participation by its senior management in "road shows");

(xiv) as expeditiously as possible, notify each Registration Selling Investor, promptly after it shall receive notice thereof, of the time when such Registration Statement has become effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed; and

(xv) as expeditiously as possible following the effectiveness of such Registration Statement, notify each seller of such Registrable Shares of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus.

(b) At any time when a Prospectus is required to be delivered under the Securities Act, the Company shall promptly notify each Registration Selling Investor and its counsel of any of the following events: (i) the Commission notifies the Company whether there will be a "review" of the Registration Statement; (ii) the Commission comments in writing on the Registration Statement (in which case the Company shall deliver to each Registration Selling Investor a copy of such comments and of all written responses thereto); (iii) the Registration Statement or any post-effective amendment is declared effective; (iv) the Commission or any other Federal or state governmental authority requests any amendment or supplement to the Registration Statement or Prospectus or requests additional information related thereto; (v) the Commission issues any stop order suspending the effectiveness of the Registration Statement or initiates any Suit (as defined in the Purchase Agreement) for that purpose; (vi) the Company receives notice of any suspension of the qualification or exemption from qualification of the Registrable Securities for sale in any jurisdiction, or the initiation or threat of any Suit for such purpose; or (vii) the financial statements included in the Registration Statement become ineligible for inclusion therein or any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference is untrue in any material respect or any revision to the Registration Statement, Prospectus or

other document is required so that it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If requested, the Registration Selling Investors shall immediately cease making offers of Registrable Shares pursuant to the Registration Statement until its receipt of the copies of the supplemented or amended Prospectus. Following receipt of the revised Prospectuses, the Registration Selling Investors shall be free to resume making offers of the Registrable Shares.

(c) In the event that it is advisable to suspend use of a Prospectus included in a Registration Statement because continued use would require Adverse Disclosure, the Company shall notify all Registration Selling Investors to such effect, and, upon receipt of such notice, each such Registration Selling Investor shall immediately discontinue any sales of Registrable Shares pursuant to such Registration Statement until such Registration Selling Investor has received copies of a supplemented or amended Prospectus or until

such Registration Selling Investor is advised in writing by the Company that the then current Prospectus may be used and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. Notwithstanding anything to the contrary herein, the Company shall not exercise its rights under this Section 2.5(c) to suspend sales of Registrable Shares for a period in excess of 30 consecutive days or a total of 60 days in any 365-day period, PROVIDED that the Company may suspend such sales for a period of up to 90 consecutive days (and a total of 90 days in a 365-day period) if the reason for the continued suspension beyond 30 days relates solely to the preparation of financial statements required to be filed in accordance with Item 7 of Form 8-K under the Exchange Act (in which event the Company shall use all commercially reasonable efforts to cause such financial statements to be prepared as promptly as reasonably practicable in the circumstances), and such suspension period shall automatically terminate two Trading Days after the filing of such financial statements. In no event shall the Company's right under this Section 2.5(c) be exercised to suspend sales of Registrable Shares beyond the period during which sales of Registrable Shares would require Adverse Disclosure. After the end of any suspension period under this Section 2.5, the Company shall use all commercially reasonable efforts (including filing any required supplemental prospectus) to restore, as promptly as reasonably possible, the effectiveness of the Registration Statement and the ability of the Registration Selling Investors to publicly resell their Registrable Securities pursuant to such effective Registration Statement.

2.6. ALLOCATION OF EXPENSES. The Company will pay all Registration Expenses for all registrations under this Agreement; PROVIDED, HOWEVER, that: (a) if a registration under Section 2.1 is withdrawn at the request of the Registration Initiating Investors (other than as a result of information concerning the business or financial condition of the Company that is made known to the Registration Selling Investors after the date on which such registration was requested), the Registration Selling Investors may pay the Registration Expenses of such registration pro rata in accordance with the number of their Series D-1 Registrable Shares included in such registration in order that, in accordance with Section 2.1(d), such registration shall not be counted as a registration requested under Section 2.1; and (b) the Company shall not be obligated to pay fees and expenses of Registration Selling Investors Counsel to the extent those fees and expenses exceed $50,000 with respect to a registration for an underwritten offering or $20,000 with respect to a registration for any other offering.

2.7. INDEMNIFICATION AND CONTRIBUTION

(a) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, the Company shall indemnify and hold harmless each

Registration Selling Investor and each underwriter of such Registrable Shares, their respective partners, members, agents, directors, officers, fiduciaries, investment advisors, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock) and employees of each of them, and each other Person, if any, who controls such Registration Selling Investor or underwriter within the meaning of the Securities Act or the Exchange Act and the officers, directors, partners, members, agents and employees of each such controlling Person (each such Person an "Investor Indemnified Person"), to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, settlement costs and expenses, as incurred, joint or several, that arise out of, relate to or are

based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement or any amendment or supplement to such Registration Statement or Prospectus, (ii) the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with the Registration Statement or the offering contemplated thereby; and the Company will reimburse such Investor Indemnified Person for any legal or any other expenses reasonably incurred by such Investor Indemnified Person in connection with investigating or defending any such loss, claim, damage, liability or action; PROVIDED, HOWEVER, that the Company will not be liable to any Investor Indemnified Person, in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or omission made in such Registration Statement, preliminary prospectus or prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by such Person specifically for use in the preparation thereof.

(b) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, each Registration Selling Investor, severally and not jointly, will indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any) and each Person, if any, who controls the Company or any such underwriter within the meaning of the Securities Act or the Exchange Act, against any and all losses, claims, damages, liabilities, settlement costs and expenses arising solely out of (i) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement or Prospectus, or (ii) any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if and to the extent (and only to the extent) that the statement or omission was made in reliance upon and in conformity with information relating to such Registration Selling Investor furnished in writing to the Company by such Registration Selling Investor specifically for use in connection with the preparation of such Registration Statement, prospectus, amendment or supplement; PROVIDED, HOWEVER, that the obligations of a Registration Selling Investor hereunder shall be limited to an amount equal to the net proceeds to such Registration Selling Investor of Registrable Shares sold in connection with such registration.

(c) Each Indemnified Person shall give notice to the Indemnifying Person promptly after such Indemnified Person has actual knowledge of any claim as to which indemnity may

be sought, and shall permit the Indemnifying Person to assume the defense of any such claim or any litigation resulting therefrom; PROVIDED, that counsel for the Indemnifying Person, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Person (whose approval shall not be unreasonably withheld, conditioned or delayed); and, PROVIDED, FURTHER, that the failure of any Indemnified Person to give notice as provided herein

shall not relieve the Indemnifying Person of its obligations under this Section 2.7 except to the extent that the Indemnifying Person is actually prejudiced by such failure. The Indemnified Person may participate in such defense at such party's expense; PROVIDED, HOWEVER, that the Indemnifying Person shall pay such expense if the Indemnified Person reasonably concludes that representation of such Indemnified Person by the counsel retained by the Indemnifying Person would be inappropriate due to actual or potential differing interests between the Indemnified Person and any other party represented by such counsel in such proceeding; PROVIDED further that in no event shall the Indemnifying Person be required to pay the expenses of more than one law firm per jurisdiction as counsel for the Indemnified Person. The Indemnifying Person also shall be responsible for the expenses of such defense if the Indemnifying Person does not elect to assume such defense. No Indemnifying Person, in the defense of any such claim or litigation shall, except with the consent of each Indemnified Person, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Person of a release from all liability in respect of such claim or litigation, and no Indemnified Person shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of the Indemnifying Person, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this Section 2.7 is due in accordance with its terms but for any reason is held to be unavailable to an Indemnified Person in respect to any losses, claims, damages and liabilities referred to herein, then the Indemnifying Person shall, in lieu of indemnifying such Indemnified Person, contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities to which such party may be subject in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and the Registration Selling Investors on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities. The relative fault of the Company and the Registration Selling Investors shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of material fact related to information supplied by the Company or the Registration Selling Investors and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Registration Selling Investors agree that it would not be just and equitable if contribution pursuant to this Section 2.7(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this Section 2.7(d), in no case shall any one Registration Selling Investor be liable or responsible for any amount in excess of the net proceeds received by such Registration Selling Investor from the offering of Registrable Shares; PROVIDED, HOWEVER, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this Section 2.7(d), notify such party or parties from whom contribution may be sought, but the omission so to notify such party or parties from whom contribution may be sought shall not relieve such party from

any other obligation it or they may have thereunder or otherwise under this Section 2.7(d). No party shall be liable for contribution with respect to any action, suit, proceeding or claim settled without its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) The indemnity and contribution agreements contained in this Section are in addition to any other liability that any Indemnifying Person may have to any Indemnified Person.

2.8. OTHER MATTERS WITH RESPECT TO UNDERWRITTEN OFFERINGS. In the event that Series D-1 Registrable Shares are sold pursuant to a Registration Statement in an underwritten offering pursuant to Section 2.1, the Company agrees to (a) enter into an underwriting agreement containing customary representations and warranties with respect to the business and operations of the Company and customary covenants and agreements to be performed by the Company, including customary provisions with respect to indemnification by the Company of the underwriters of such offering; (b) use all commercially reasonable efforts to cause its legal counsel to render customary opinions to the underwriters with respect to the Registration Statement; and (c) use all commercially reasonable efforts to cause its independent public accounting firm to issue customary "cold comfort letters" to the underwriters with respect to the Registration Statement.

2.9. INFORMATION BY HOLDER. Each holder of Registrable Shares included in any registration shall furnish to the Company such customary information regarding such holder and the distribution proposed by such holder as the Company may reasonably request in writing and that is required under applicable laws, rules and regulations.

2.10. "LOCK-UP" AGREEMENT; CONFIDENTIALITY OF NOTICES

(a) Each Series D-2 Investor that Beneficially Owns 5.0% or more of the outstanding Common Stock on the date of the filing of an initial registration statement for an underwritten offering (a "5% Series D-2 Investor") and each Series D-1 Investor, in each case if requested by the Company and the managing underwriter of such underwritten offering, shall not Transfer any Registrable Shares or other securities of the Company held by such Series D-1 Investor or 5% Series D-2 Investor for a period of 90 days following the effective date of the Registration Statement for such underwritten offering and shall enter into customary separate agreements to such effect as reasonably requested by the Company and such managing underwriter; PROVIDED that substantially all executive officers and directors (other than Series D-1 Directors) of the Company enter into similar agreements as required by the underwriter. The Company may impose stop-transfer instructions with respect to the Registrable Shares or other securities owned by any such Series D-1 Investor or 5% Series D-2 Investor subject to the foregoing restriction until the end of such 90-day period.

(b) Any Investor receiving any written notice from the Company regarding the Company's plans to file a Registration Statement shall treat such notice confidentially and shall not disclose such information to any Person other than as necessary to exercise its rights under this Agreement.

2.11. TERMINATION. The rights and obligations of an Investor under this Section 2 shall terminate on the first date on which such Investor no longer holds any Registrable Shares, except that the rights and obligations of the Company and the Registration Selling Investors under Section 2.7 shall survive the termination of any and all other provisions of this Agreement.

3. PREEMPTIVE RIGHTS

3.1. RIGHTS OF INVESTORS

(a) The Company shall not issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, any Company-Offered Securities, unless in each such case the Company shall have first complied with this Section 3.1. The Company shall deliver to each Investor a Company Offer, which shall (i) identify and describe the Company-Offered Securities, (ii) describe the price (expressed in either a fixed dollar amount or a definitive formula pursuant to which the only variable is the market price of the Common Stock at or near the time of the proposed issuance, sale or exchange) and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Company-Offered Securities to be issued, sold or exchanged, (iii) identify the Persons (if known) to which or with which the Company-Offered Securities are to be offered, issued, sold or exchanged, and (iv) offer to issue and sell to or exchange with such Investor that is an Accredited Investor (a) such Accredited Investor's Company-Offer Basic Amount and (b) such Accredited Investor's Company-Offer Unsubscribed Amount. Notwithstanding the other provisions of this Section 3.1, after delivery of the Company Offer, the Company may issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, Company-Offered Securities to the offerees or purchasers described in the Company Offer and upon the terms and conditions (including unit prices and interest rates) that are not more favorable, in the aggregate, to the acquiring Person or Persons than those set forth in the Company Offer without complying with the terms of this Section 3.1, PROVIDED that the Company permits each Accredited Investor to purchase the number of Company-Offered Securities that such Accredited Investor is entitled to purchase pursuant to this Section 3.1 on substantially the same terms as the Company sold the Company-Offered Securities in the initial transaction, within 20 days after the Company receives a Company-Offer Acceptance from such Accredited Investor.

(b) To accept a Company Offer, in whole or in part, an Accredited Investor must deliver to the Company, on or prior to the date 15 days after the date of delivery of the Company Offer, a Company-Offer Acceptance providing a representation letter certifying that such Accredited Investor is an accredited investor within the meaning of Rule 501 under the Act and indicating the portion of the Accredited Investor's Company-Offer Basic Amount that such Accredited Investor elects to purchase and, if such Accredited Investor shall elect to purchase all of its Company-Offer Basic Amount, the Company-Offer Unsubscribed Amount (if any) that such Accredited Investor elects to purchase. If the Company-Offer Basic Amounts subscribed for by all Accredited Investors are less than the total of all of the Company-Offer Basic Amounts available for purchase, then each Accredited Investor who has set forth a Company-Offer Unsubscribed Amount in its Company-Offer Acceptance shall be entitled to purchase, in addition to the Company-Offer Basic Amounts subscribed for, the Company-Offer Unsubscribed Amount it has subscribed for; PROVIDED, HOWEVER, that if the Company-Offer Unsubscribed Amounts subscribed for exceed the Company-Offer Available Unsubscribed Amount, each Accredited Investor who has subscribed for any Company-Offer Unsubscribed Amount shall be entitled to purchase only that portion of the Company-Offer Available Unsubscribed Amount as the Company-Offer Unsubscribed Amount subscribed for by such Accredited Investor bears to the total Company-Offer Unsubscribed Amounts subscribed for by all Investors, subject to rounding by the Board of Directors to the extent it deems reasonably necessary.

(c) The Company shall have 90 days from the expiration of the period set forth in Section 3.1(b) to issue, sell or exchange

all or any part of the Company-Offer Refused Securities, but only to the offerees or purchasers described in the Company Offer (if so

described therein) and only upon terms and conditions (including unit prices and interest rates) that are not more favorable, in the aggregate, to the acquiring Person or Persons than those set forth in the Company Offer.

(d) In the event the Company shall propose to sell less than all the Company-Offer Refused Securities, then each Accredited Investor may, at its sole option and in its sole discretion, reduce the number or amount of the Company-Offered Securities specified in its Company-Offer Acceptance to an amount that shall be not less than the number or amount of the Company-Offered Securities that the Accredited Investor elected to purchase pursuant to Section 3.1(b) multiplied by a fraction, (i) the numerator of which shall be the number or amount of Company-Offered Securities the Company actually proposes to issue, sell or exchange (including Company-Offered Securities to be issued or sold to Accredited Investors pursuant to Section 3.1(b) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Company-Offered Securities. In the event that any Accredited Investor so elects to reduce the number or amount of Company-Offered Securities specified in its Company-Offer Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Company-Offered Securities unless and until such securities have again been offered to the Accredited Investors in accordance with Section 3.1(a).

(e) Upon (i) the closing of the issuance, sale or exchange of all or less than all of the Company-Offer Refused Securities or (ii) such other date agreed to by the Company and Accredited Investors who have subscribed for a majority of the Company-Offered Securities subscribed for by the Accredited Investors, such Accredited Investor or Investors shall acquire from the Company and the Company shall issue to such Accredited Investor or Investors, the number or amount of Company-Offered Securities specified in the Investor Offers of Acceptance, as reduced pursuant to Section 3.1(d) if any of the Accredited Investors has so elected, upon the terms and conditions specified in the Company Offer.

(f) The purchase by the Accredited Investors of any Company-Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Accredited Investors of a purchase agreement relating to such Company-Offered Securities reasonably satisfactory in form and substance to the Accredited Investors and their respective counsel.

(g) Company-Offered Securities not acquired by the Accredited Investors or other Persons in accordance with Section 3.1(c) may not be issued, sold or exchanged until they are again offered to the Accredited Investors under the procedures specified in this Agreement.

3.2. EXCLUDED TRANSACTIONS. The rights of the Accredited Investors under Section 3.1 shall not apply to:

(a) the issuance of securities of the Company for consideration other than cash, including the issuance of shares (i) as a stock dividend to holders of Common Stock, Shares or any other Company securities, or upon any subdivision or combination of shares of Common Stock, Shares or any other Company securities, and (ii) upon exercise or conversion of preferred stock, options, warrants or debt securities exercisable or

convertible for Common Stock pursuant to their terms;

(b) the issuance of Common Stock or options to purchase Common Stock to employees, directors or consultants of the Company or any Subsidiary pursuant to a stock option plan, employee stock purchase plan or other equity incentive plan or arrangement approved by the Board of Directors of the Company and by a majority

of the Independent Directors;

(c) the issuance of securities solely in consideration for the acquisition (whether by merger or otherwise) by the Company or any of its subsidiaries of all or substantially all of the stock or assets of such entity;

(d) the issuance of securities of the Company in a firm-commitment underwritten public offering pursuant to an effective Registration Statement;

(e) the issuance of securities of the Company, or the grant of options or warrants therefor, in connection with any present or future borrowing, line of credit, leasing or similar financing arrangement approved by the Board of Directors of the Company and by a majority of the Independent Directors; or

(f) the issuance of securities in connection with any transaction with a strategic investor, vendor, lessor, customer, supplier, marketing partner, developer or integrator or any similar arrangement, in each case the primary purpose of which is not to raise equity capital, approved by the Board of Directors of the Company and by a majority of the Independent Directors.

In addition, the rights under Section 3.1 of Accredited Investors that are (i) Series D-1 Investors shall not apply to an issuance of securities as to which Series D-1 Investors holding not less than a majority of the Series D-1 Stock have delivered to the Company a written notice to the effect that Series D-1 Investors have waived their right to participate in the contemplated offering under Section 3.1, or (ii) Series D-2 Investors shall not apply to an issuance of securities as to which Series D-2 Investors holding not less than a majority of the Series D-2 Stock have delivered to the Company a written notice to the effect that Series D-2 Investors have waived their right to participate in the contemplated offering under Section 3.1.

3.3. TERMINATION. The rights of an Investor under this Section 3 shall terminate upon the earlier of (a) the first date on which the Investors, in the aggregate, hold less than 10% of the Shares originally issued on the date hereof and (b) the closing of a Company Sale.

4. COVENANTS OF THE COMPANY

4.1. INFORMATION REQUIREMENTS. The Company shall furnish to each Investor:

(a) promptly after filing, a copy of each report or other document (including any schedules or exhibits thereto) that is filed by the Company with the Commission under the Securities Act or the Exchange Act and that is available to the general public; PROVIDED that no such copy shall be required if such report was filed using

the Electronic Data Gathering, Analysis, and Retrieval system of the Commission; and

(b) contemporaneously with delivery to holders of Common Stock, a copy of each report or other document (other than any document filed with the Commission under the Securities Act or the Exchange Act) delivered to holders of Common Stock.

4.2. BOARD OF DIRECTORS. For so long as any director is serving at the election of the holders of Series D-1 Stock pursuant to the Series D Certificate:

(a) The Company shall reimburse the Series D-1 Directors for their reasonable out-of-pocket expenses incurred in attending meetings of the Board of Directors of the Company or any committee thereof, to the extent provided in, and in accordance with, the Company's reimbursement policy in effect from time to time with respect to other directors who are not employees of the Company or a Subsidiary. The Series D-1 Directors shall be entitled to receive such fees or other compensation as may be paid by the Company from time to time to directors who are not employees of the Company or a Subsidiary.

(b) The Company's Certificate of Incorporation shall at all times provide for the indemnification of the members of the Board of Directors to the fullest extent provided by the Delaware General Corporation Law. In the event that the Company or any of its successors or assigns (i) consolidates with or mergers into any other entity and shall not be the continuing or surviving corporation in such consolidation or merger or (ii) Transfers all or substantially all of its properties and assets to any entity, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as contained in the Company's Certificate of Incorporation.

(c) The Company shall use all commercially reasonable efforts to carry and maintain any insurance against directors' and officers' liability to cover such directors to the same extent as directors elected by the holders of Common Stock; PROVIDED, HOWEVER, that if the aggregate annual premiums for such insurance exceed 200% of the per annum rate of premium currently paid by the Company on the date of this Agreement for such insurance, then the Company shall provide, at a minimum, the maximum coverage that shall then be available at an annual premium equal to 200% of such rate; PROVIDED, HOWEVER, that in no event should the coverage afforded the Series D-1 Directors be less favorable in any respect than the coverage afforded directors elected by the holders of Common Stock.

4.3. REPORTS UNDER SECURITIES EXCHANGE ACT OF 1934. With a view to making available to the Investors the benefits of Rule 144 and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without registration, and with a view to making it possible for Investors to have the Registrable Shares registered for resale pursuant to a registration on Form S-3 (or any successor form), the Company shall:

(a) use all commercially reasonable efforts to make and keep current public information about the Company available, as those terms are understood and defined in Rule 144, at all times;

(b) use its best efforts to file with the Commission in a

timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to any Investor upon request (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and (ii) such other reports and documents of the Company as such Investor may reasonably request to avail itself of any similar rule or regulation of the Commission allowing it to sell any Registrable Shares without registration.

4.4. REGISTRATION RIGHTS. The Company shall not enter into any Other Registration Rights with any Other Registration Rights Holder unless such Other Registration Rights do not conflict with the provisions of this Agreement. Such Other Registration Rights shall not be deemed to conflict with this Agreement solely as a result of a grant of incidental registration rights to the Other

Registration Rights Holders with respect to a Registration Statement filed pursuant to Section 2.1, PROVIDED that:

(a) Investors are granted the right to exercise incidental registration rights with respect to any registration required by such Other Registration Rights Holders to be made by the Company;

(b) if a managing underwriter advises the Company that marketing factors require a limitation on the number of shares to be underwritten in an offering made at the request of the Other Registration Rights Holders, the shares held by the Investors shall be excluded first, before any shares of such Other Registration Rights Holders are excluded; and

(c) if a managing underwriter advises the Company that marketing factors require a limitation on the number of shares to be underwritten in an offering requested under Section 2.1, the shares held by such Other Registration Rights Holders shall be excluded first, before any shares of the Investors are excluded.

4.5. AVAILABLE COPY. The Secretary of the Company shall maintain an original copy of this Agreement, duly executed by each of the parties hereto, at the principal executive office of the Company and shall make such copy available for inspection by any Person requesting it.

4.6. TERMINATION. The rights of an Investor under this Section 4 shall terminate upon the first date on which such Investor no longer holds any Shares, PROVIDED that Section 4.4 shall terminate upon the earlier of (A) the first date on which such Investor no longer holds any Shares, and (B) the closing of a Company Sale.

5. TRANSFER RESTRICTIONS

5.1. PROHIBITION. Any Transfer, whether direct or indirect, of any of the Shares or Registrable Shares by an Investor, other than according to the terms of this Agreement, shall be void and convey no right, title, or interest in or to any of such Shares or Registrable Shares to the purported transferee.

5.2. RESTRICTIONS. No Investor shall Transfer any Shares or Registrable Shares or any legal or beneficial interest therein except for:

(a) Transfers of Registrable Shares pursuant to a bona

fide public offering under a Registration Statement filed with the Commission under the Securities Act, including pursuant to the exercise of rights granted in Section 2;

(b) Transfers of Registrable Shares pursuant to Rule 144;

(c) Transfers of Shares to any non-Affiliate (other than a Competitor), PROVIDED that (i) immediately after giving effect to such Transfer, the Investor reasonably believes the transferee Beneficially Owns less than 10% of the outstanding Common Stock, and (ii) such transferee delivers to the Company and the Investors a written instrument, in form and substance reasonably acceptable to the Company, agreeing to be bound by the terms of this Agreement as if such transferee were an Investor;

(d) Transfers of Shares or Registrable Shares to an Affiliate of such Investor (or to any investor in such Affiliate of such Investor pursuant to a pro rata liquidation or

distribution), PROVIDED that such transferee delivers to the Company and the Investors a written instrument, in form and substance reasonably acceptable to the Company, agreeing to be bound by the terms of this Agreement as if such transferee were an Investor;

(e) Transfers of Shares or Registrable Shares pursuant to a bona fide public offer that is subject to the provisions of Regulation 14D or Rule 13e-3 under the Exchange Act (or any successor regulation, rule or statute) by a Person to purchase or exchange for cash or other consideration any shares of Common Stock and that consists of an offer to acquire more than 25% of the then-outstanding Common Stock, PROVIDED that such offer is not made by and does not include (i) the Company, an Investor, or an Affiliate of the Company or any Investor or (ii) any group (within the meaning of Section 13(d) of the Exchange Act) formed for the purpose of acquiring, holding, voting or disposing of Common Stock that includes the Company, an Investor, or an Affiliate of the Company or any Investor; or

(f) Transfers of Shares or Registrable Shares pursuant to a merger, consolidation or reorganization to which the Company is a party.

5.3. LEGENDS.

(a) Each Series D-1 Investor agrees to the imprinting on certificates representing such Investor's Shares or Registrable Shares of a legend substantially to the following effect:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, DISTRIBUTED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED. THE SALE OR OTHER DISPOSITION OF ANY OF THE SHARES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY AN INVESTOR RIGHTS AGREEMENT DATED AS OF _____, 2003 BY AND AMONG THIS CORPORATION AND CERTAIN OF THE STOCKHOLDERS OF THIS

CORPORATION. A COPY OF SUCH AGREEMENT IS AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS AT THE PRINCIPAL EXECUTIVE OFFICE OF THIS CORPORATION."

The legend set forth above shall be removed if and when (a) the securities represented by such certificate are disposed of pursuant to an effective Registration Statement or (b) the Series D-1 Investor delivers to the Company an opinion of counsel reasonably acceptable to the Company to the effect that such legend may be removed.

(b) Each Series D-2 Investor agrees to the imprinting, so long as is required by this Section 5.3(b), of the following legend on any certificate evidencing Series D-2 Securities:

"THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN

ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES."

Certificates evidencing Series D-2 Securities shall not be required to contain such legend or any other legend (i) pursuant to or following any sale of such Series D-2 Securities pursuant to an effective Registration Statement covering the resale of such Series D-2 Securities under the Securities Act, (ii) following any sale of such Series D-2 Securities pursuant to Rule 144, (iii) if such Series D-2 Securities are eligible for sale under Rule 144(k), or (iv) if such legend is not, in the reasonable opinion of the Company counsel, required under the circumstances under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the Commission). Following the effectiveness of the Shelf Registration Statement or at such earlier time as a legend is no longer required for certain Series D-2 Securities, the Company will, no later than three Trading Days following the delivery by a Series D-2 Investor to the Company or the Company's transfer agent of a legended certificate representing such Series D-2 Securities, deliver or cause to be delivered to such Series D-2 Investor a certificate representing such Series D-2 Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in this Section, except as may be required by applicable law.

5.4. ACKNOWLEDGEMENT. The Company acknowledges and agrees that a Series D-2 Investor may from time to time pledge pursuant to a bona fide margin agreement or grant a security interest in some or all of the Series D-2 Securities and, if required under the terms of such arrangement, such Series D-2 Purchaser may transfer pledged or secured Series D-2 Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of the pledgee, secured party or pledgor shall be required in connection therewith except as required by applicable law. Further, no notice shall be required of such pledge. At the appropriate Series D-2 Investor's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Series D-2 Securities may reasonably request in connection with a

pledge or transfer of the Series D-2 Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders thereunder.

6. STANDSTILL AGREEMENTS

6.1. RESTRICTIONS

(a) No Series D-1 Investor shall, directly or indirectly, unless specifically permitted by this Agreement or authorized or consented to do so in writing in advance by the Company:

(i) except for shares or securities acquired as a dividend or distribution on the Shares, acquire or agree, offer, seek or propose to acquire, or cause to be acquired, Beneficial Ownership of any shares of Common Stock, or any options, warrants or other rights (including any convertible or exchangeable securities) to acquire any shares of Common Stock, to the extent that such acquisition would result in an increase in such Investor's (or Affiliate's, as the case may be) percentage Beneficial Ownership of Common Stock above the percentage Beneficial Ownership of Common Stock as of the date of this Agreement;

(ii) make, or in any way participate in, any "solicitation" of "proxies" (as such terms are defined in Rule 14a-1 under the Exchange Act) with respect to the

voting of any securities of the Company;

(iii) deposit any securities of the Company in a voting trust or subject any such securities to any arrangement or agreement with any Person (other than one or more Investors or Affiliates);

(iv) form, join, or in any way become a member of any group within the meaning of Section 13(d) of the Exchange Act (other than a "group" consisting solely of Investors and Affiliates that together Beneficially Own less than a majority of the Company's outstanding voting securities);

(v) arrange any financing for, or provide any financing commitment specifically for, the purchase by such Investor of any voting securities or securities convertible or exchangeable into or exercisable for any voting securities or assets of the Company, except for such assets as are then being offered for sale by the Company; PROVIDED, HOWEVER, that this clause (v) shall not apply to any such financing arrangements or commitments to the extent involving a Transfer of Common Stock Beneficially Owned by an Investor to any Person that is not an Investor;

(vi) seek to propose or propose, whether alone or in concert with other Investors, any tender offer,

exchange offer, merger, business combination, restructuring, liquidation, recapitalization or similar transaction involving the Company or any of the Subsidiaries;

(vii) for so long as holders of Series D-1 Stock are entitled to elect Series D-1 Directors pursuant to the Series D Certificate, nominate any Person for election by the holders of Common Stock as a director of the Company who is not nominated by the then-incumbent directors, or propose any matter to be voted upon by the stockholders of the Company (other than for an Affiliate of such Investor acting in his or her capacity as a director of the Company);

(viii) authorize or direct any of its directors, officers, employees, agents or other representatives acting in any such capacities to take any action described in clauses (i) through (vii) above;

(ix) solicit, initiate, or knowingly or intentionally facilitate the taking of any action by an Affiliate of such Series D-1 Investor (that is not itself an Investor) that would be prohibited by this Section 6.1 if such Affiliate were an Investor; or

(x) publicly announce or disclose any intention, plan or arrangement inconsistent with the foregoing.

Notwithstanding the foregoing, a Series D-1 Investor shall not be prohibited from taking any action described in clauses (i) through (x) to the extent such action is taken in response to, and in competition with, a similar action that has been undertaken by a Person who is not an Investor.

(b) No Series D-1 Investor will, nor will it authorize or permit any of its directors, officers, employees, agents or other representatives acting in any such capacities to, take any action that would require the Company to make a public announcement regarding any of the matters set forth in Section 6.1(a).

(c) Anything in this Section 6.1 to the contrary notwithstanding, this Section 6.1 shall not prohibit or restrict (i) the voting of securities of the Company held by the Series D-1 Investors or (ii) any disclosure pursuant to Section 13(d) of the Exchange Act that a Series D-1 Investor reasonably believes, after consulting with outside counsel, is required in connection with any action taken by a Series D-1 Investor pursuant to Section 6.1(b).

6.2. CERTAIN PERMITTED TRANSACTIONS AND COMMUNICATIONS. Anything in Section 6.1 to the contrary notwithstanding, Section 6.1 shall not prohibit (a) the conversion of Series D-1 Stock, the exercise of the Series D-1 Warrants, or the consummation by a Series D-1 Investor of any transaction expressly provided for in this Agreement, PROVIDED that if such transaction is to be consummated on or before the earliest of (i) June 15, 2005, (ii) the first date on which none of the Convertible Debentures remains outstanding, and (iii) the first date on which the provision in the Convertible Debentures requiring redemption upon a Change of Control (as defined in the indenture governing the Convertible Debentures) is not in effect, then such Series D-1 Investor (which for this purpose shall include any syndicate or group that includes such Series D-1 Investor and that

would be deemed to be a person under Section 13(d)(3) of the Exchange Act) shall not, without the prior written consent of the Company, be entitled to consummate such transaction to the extent such Series D-1 Investor (including any such syndicate or group) would thereafter Beneficially Own more than 49.9% of the then-outstanding voting securities of the Company (any voting securities of which such Series D-1 Investor is the Beneficial Owner that are not then outstanding being deemed outstanding for purposes of calculating such percentage), Common Stock, (b) any action taken by Series D-1 Investors in connection with the nomination and election of the Series D-1 Directors or any action taken by the Series D-1 Directors in such capacities, (c) officers and employees of the Series D-1 Investors from communicating with officers of the Company or its Affiliates on matters related to or governed by this Agreement, matters relating to the Series D-1 Investors investment in the Company, or operational matters, or (d) the Series D-1 Investors from communicating with the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the Chief Financial Officer of the Company, so long as any such communication is conveyed in confidence, would not require public disclosure by the Series D-1 Investors or by the Company, and is not intended to elicit, and, in the reasonable belief (after consulting with outside counsel) of the Series D-1 Investor making such communication, does not require the issuance of, a public response by the Company.

6.3. TERMINATION. The obligations of a Series D-1 Investor under this Section 6 shall terminate upon the earlier of (a) the first date on which such Series D-1 Investor and its Affiliates Beneficially Own less than 5% of the outstanding shares of Common Stock, collectively (on an as-converted basis), and (b) the closing of a Company Sale.

7. TRADING LIMITATIONS

7.1. RESTRICTIONS. For so long as an Investor or its Affiliates hold Shares, such Investor shall not sell, contract to sell, grant any option to purchase, or make any short sale of Common Stock, establish a "put equivalent position" (as such term is defined in Rule 16a-1(h) under the Exchange Act) or engage in any transaction the result of which would involve any of the foregoing, at a time when such Investor has no equivalent offsetting long position in Common Stock. For purposes of determining whether an Investor has an equivalent offsetting long position in the Common Stock, all Common Stock held by such Investor, all shares of Common Stock issuable upon conversion of all Shares or upon exercise in full of any warrant for Common Stock then held by such Investor (assuming that such securities were then fully convertible or exercisable, notwithstanding any provisions to the contrary, and giving effect to any conversion or exercise price adjustments scheduled to take effect in the future), and all shares of Common Stock issuable upon exercise of

any call option or "call equivalent position" (as defined in Rule 16a-1(b) under the Exchange Act) held by such Investor (assuming that such call position was then fully convertible or exercisable, notwithstanding any provisions to the contrary, and giving effect to any conversion or exercise price adjustments scheduled to take effect in the future) shall be deemed to be held long by such Investor.

7.2. TERMINATION. The obligations of an Investor under this Section 7 shall terminate upon the earlier of (a) the first date on which such Investor no longer Beneficially Owns any Shares or Registrable Shares and (b) the closing of a Company Sale.

8. CONFIDENTIALITY.

8.1. RESTRICTIONS. Each Series D-1 Investor agrees that it will keep confidential and will not disclose, divulge or use for any purpose, other than to monitor its investment in the Company, any Confidential Information, unless such Confidential Information (a) is known or becomes

known to the public in general (other than as a result of a breach of this Section 8 by such Series D-1 Investor), (b) is or has been independently developed or conceived by the Series D-1 Investor without use of the Company's Confidential Information or (c) is or has been made known or disclosed to the Series D-1 Investor by a third party unless at the time of the proposed disclosure by the Series D-1 Investor, the Series D-1 Investor has knowledge that the disclosure was made to the Series D-1 Investor in breach of an obligation of confidentiality such third party had to the Company; PROVIDED, HOWEVER, that a Series D-1 Investor may disclose Confidential Information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, (ii) to any prospective purchaser of any Shares from such Series D-1 Investor as long as such prospective purchaser agrees to be bound by the provisions of this Section 8 and names the Company as a third party beneficiary of such agreement, (iii) to any Affiliate, PROVIDED that the Confidential Information is disclosed on a confidential basis to such party, or (iv) as may otherwise be required by law, legal process or regulatory requirements, PROVIDED that the Series D-1 Investor takes reasonable steps to minimize the extent of any such required disclosure. Notwithstanding the foregoing, such information shall not be deemed confidential for the purpose of enforcing this Agreement. The Series D-1 Investor shall be liable for the disclosure of any Confidential Information by any Person described in the preceding clauses (i) and (iii).

8.2. TERMINATION. The obligations of a Series D-1 Investor under this Section 8 shall terminate on the second anniversary of the earlier of (a) the first date on which such Series D-1 Investor no longer Beneficially Owns any Shares or Registrable Shares and (b) the closing of a Company Sale.

9. ELECTION OF SERIES D-1 DIRECTORS

9.1. INITIAL SERIES D-1 DIRECTORS. The Company confirms that its Board of Directors has elected, effective contemporaneously with the execution and delivery of this Agreement, Douglas A. Kingsley and Michael Pehl as directors of the Company. The Series D-1 Investors confirm that such individuals shall constitute two of the initial Series D-1 Directors. The Company and the Series D-1 Investors agree to take any such further actions as may be necessary or desirable (i) to effect the appointment of such additional initial Series D-1 Directors as the Series D-1 Investors are permitted to designate pursuant to the Series D Certificate and (ii) to effect the election, from time to time in the future, of individuals as Series D-1 Directors pursuant to the Series D Certificate, subject to the provisions of Section 9.2. No individual designated to serve on the Board of Directors as a Series D-1 Director shall be deemed to be the deputy of or otherwise required to discharge his or her duties under the direction of, or with special attention to the interests of, the Series D-1 Investors.

9.2. DESIGNATION OF SERIES D-1 DIRECTORS. The Company shall provide the Series D-1 Investors with 30 days' prior written notice of any intended mailing of a notice to stockholders for a meeting at which the term of one or more Series D-1 Directors shall expire. Such notice shall specify (i) the date of such meeting, (ii) the date on which such mailing is intended to be made, and (iii) the name or names of the Series D-1 Directors whose terms are to expire at such meeting. A Series D-1 Investor or Investors holding in the aggregate a majority of the shares of Series D-1 Stock then outstanding (not including outstanding shares of Common Stock) may give written notice to the other Series D-1 Investors and the Company, no later than 15 days after receipt of such notice from the Company, of the individuals to be designated by the Board as nominees for election as Series D-1 Directors at such meeting. Only the individuals designated pursuant to the preceding sentence or otherwise in accordance with the Series D Certificate shall be nominated and recommended for

election as Series D-1 Directors. If Series D-1 Investors fail to give notice to the Company as provided above, then the individuals then serving as Series D-1 Directors shall be deemed to have been designated for reelection.

9.3. COVENANT REGARDING COMMON DIRECTORS. In the event one or more directors elected by the holders of the Common Stock (voting as a single class or with one or more other classes or series of capital stock (the "Common Directors")) no longer serves as a member of the Board of Directors due to his or her resignation, removal, incapacity or death (the resulting vacancy in the Board of Directors being referred to herein as a "Common Director Vacancy"), for so long as this Section 9 is in effect and the Series D-1 Investors have the right to elect one or more members of the Board of Directors pursuant to the terms of the Series D Certificate, the Series D-1 Investors hereby covenant and agree as follows:

(a) In the event the Board of Directors elects to fill a Common Director Vacancy by vote of the members of the Board of Directors then in office, the Series D-1 Investors shall use all commercially reasonable efforts to cause the Series D-1 Directors to vote for the nominee approved by a majority of the remaining Common Directors then in office.

(b) In the event a Common Director Vacancy is filled by a person who was not approved by a majority of the Common Directors in office (regardless of whether the Series D-1 Investors used all commercially reasonable efforts as required by subsection (a) above), the Series D-1 Investors shall, notwithstanding their rights contained in the Series D Certificate, use commercially reasonable efforts to cause a Series D-1 Director to resign and be replaced by a person approved by a majority of the Common Directors then in office.

9.4. TERMINATION. The rights of the Series D-1 Investors under this Section 9 shall terminate as of the date on which holders of shares of Series D-1 Stock are no longer entitled to elect Series D-1 Directors pursuant to the Series D Certificate.

10. NONPUBLIC INFORMATION. Notwithstanding any other provision of this Agreement, neither the Company nor any Person acting on its behalf will provide any Series D-2 Investor with any material, nonpublic information about the Company unless such Series D-2 Investor consents to receive such information in writing in advance even if otherwise required pursuant to the terms of any Transaction Document (as defined in the Purchase Agreement). The Company understands and confirms that each of the Series D-2 Investors will rely on the foregoing covenant in effecting transactions in securities of the Company.

11. GENERAL

11.1. OWNERSHIP CALCULATIONS

(a) Except as otherwise expressly provided herein, in determining the number or percentage of Shares owned by an Investor for purposes of exercising rights under this Agreement, (i) Shares owned by an Investor shall be deemed to include Shares that have been converted into Common Stock so long as such Common Stock is owned by such Investor and (ii) all Shares held by Affiliates shall be aggregated together, PROVIDED that no Shares shall be attributed to more than one Person within any such group of Affiliates.

(b) In determining the number or percentage of Registrable Shares owned by an Investor for purposes of exercising rights under this Agreement, the determination shall include shares of Common Stock issuable upon conversion, exercise or exchange of securities, including the Shares, even if such conversion, exercise or exchange

has not been effected.

11.2. NOTICES. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party at its address or facsimile number set forth on the signature page hereof, or such other address or facsimile number as such party may hereinafter specify for the purpose of this Section to the party giving such notice. Each such notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified on the signature pages of this agreement and the appropriate confirmation is received or, (b) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or, (c) if given by any other means, when delivered at the address specified on the signature pages of this Agreement.

11.3. AMENDMENTS AND WAIVERS. This Agreement may be amended or terminated and the observance of any term of this Agreement may be waived with respect to all parties to this Agreement (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company, Investors holding greater than 50% of the Series D-1 Stock then held by Investors and Investors holding greater than 50% of the Series D-2 Stock then held by Investors; PROVIDED that any amendment, termination or waiver to:

(a) any provision of this Agreement that affects only the rights of holders of Series D-1 Stock and has no adverse effect on the rights of holders of Series D-2 Stock may be amended with the written consent of the Company and Investors holding greater than 50% of the Series D-1 Stock then held by Investors; PROVIDED that after such amendment such provision continues to affect only the holders of the Series D-1 Stock; and

(b) any provision of this Agreement that affects only the rights of holders of Series D-2 Stock and has no adverse effect on the rights of holders of Series D-1 Stock may be amended with the written consent of the Company and Investors holding greater than 50% of the Series D-2 Stock then held by Investors; PROVIDED that after such amendment such provision continues to affect only the holders of the Series D-2 Stock.

Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereunder may not be waived with respect to any Investor without the written consent of such Investor unless such amendment, termination or waiver applies to all Investors of the same series of Series D Preferred Stock in the same fashion (it being agreed that a waiver of the provisions of Section 3 with respect to a particular transaction shall be deemed to apply to all Accredited Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Accredited Investors may nonetheless, by agreement with the Company, purchase securities in such transaction). The Company shall give prompt written notice

of any amendment or termination of this Agreement or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination or waiver. Any amendment, termination or waiver effected in accordance with this Section 10.3 shall be binding on all parties hereto, even if they do not execute such consent. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

11.4. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. All questions

concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each of the parties hereby waives all rights to a trial by jury.

11.5. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in any number of counterparts (including facsimile signature), each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. No provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder, except to the extent expressly provided herein.

11.6. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to such subject matter.

11.7. INTERPRETATION AND RULES OF CONSTRUCTION. Definitions contained in this Agreement apply to singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms "includes" and the word "including" and words of similar import shall be deemed to be followed by the words "without limitation." Section and paragraph references are to the Sections and paragraphs of this Agreement unless otherwise specified. The word "or" shall not be exclusive. For purposes of this Agreement, the terms "Company" and "Subsidiary" shall include any entity which is, in whole or in part, a predecessor of the Company or any Subsidiary, unless the context expressly requires otherwise. The headings in this Agreement are included for convenience only and shall be ignored in the construction or interpretation hereof.

11.8. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

11.9. SPECIFIC PERFORMANCE. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Investor shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other

injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Investor Rights Agreement to be duly executed by their respective authorized signatories as of the date first written above.

ASPEN TECHNOLOGY, INC.

By: _____
Name: _____
Title: _____

ADDRESS FOR NOTICES:
Aspen Technology, Inc.
Ten Canal Park
Cambridge, Massachusetts 02141
Attention: Chief Financial Officer and General Counsel
Facsimile: 617.949.1717

WITH A COPY TO:
Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
Attention: Mark L. Johnson
Facsimile: 617.526.5000

[INVESTOR SIGNATURE PAGES FOLLOW]

SERIES D-1 INVESTORS:

ADVENT ENERGY II LIMITED PARTNERSHIP

ADVENT PGGM GLOBAL LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-A LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-B LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-C LIMITED PARTNERSHIP

DIGITAL MEDIA & COMMUNICATIONS III-D C.V.

DIGITAL MEDIA & COMMUNICATIONS III-E C.V.

GLOBAL PRIVATE EQUITY III LIMITED PARTNERSHIP

GLOBAL PRIVATE EQUITY IV LIMITED PARTNERSHIP

GPE IV CPP INVESTMENT BOARD CO-INVESTMENT LIMITED PARTNERSHIP

By: Advent International Limited Partnership, General Partner

By: Advent International Corporation, General Partner

By:

    Senior Vice President

ADDRESS FOR NOTICES:
c/o Advent International Corporation
75 State Street
Boston, Massachusetts 02109
Attention: Douglas A. Kingsley, Managing Director
Facsimile: 617.951.0568

WITH A COPY TO:
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pennsylvania 19103
Attention: Julia D. Corelli
Facsimile: 215.981.4750

ADVENT PARTNERS (NA) GPE III LIMITED PARTNERSHIP

ADVENT PARTNERS DMC III LIMITED PARTNERSHIP

ADVENT PARTNERS GPE-III LIMITED PARTNERSHIP

ADVENT PARTNERS GPE-IV LIMITED PARTNERSHIP

ADVENT PARTNERS II LIMITED PARTNERSHIP

By: Advent International Corporation, General Partner

By:

    Senior Vice President

ADDRESS FOR NOTICES:
c/o Advent International Corporation
75 State Street
Boston, Massachusetts 02109
Attention: Douglas A. Kingsley, Managing Director
Facsimile: 617.951.0568

WITH A COPY TO:
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pennsylvania 19103
Attention: Julia D. Corelli
Facsimile: 215.981.4750

SERIES D-2 INVESTORS:

PINE RIDGE FINANCIAL INC.

By:

Name:

Title:

ADDRESS FOR NOTICES:
Pine Ridge Financial Inc.
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022
Attention: Avi Vigder
Telephone: 212.651.9000
Facsimile: 212.651.9010

WITH A COPY TO:
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attention: Adam J. Kansler, Esq.
Facsimile: 212.969.2900

SMITHFIELD FIDUCIARY LLC

By:

Name:

Title:

ADDRESS FOR NOTICES:
Smithfield Fiduciary LLC
c/o Highbridge Capital Management, LLC
9 West 57th Street, 27th Floor
New York, NY 10019
Attention: Ari J. Storch / Adam J. Chill
Facsimile: 212.751.0755

WITH A COPY TO:
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attn: Eleazer Klein, Esq.
Facsimile: 212.593.5955

PERSEVERANCE LLC

By:

Name:

Title:

ADDRESS FOR NOTICES:
Perseverance LLC
c/o Cavallo Capital Corp.
660 Madison Avenue
New York, NY 10022

Attention: Avi Vigder
Facsimile: 212.651.9010

WITH A COPY TO:
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attention: Adam J. Kansler, Esq.
Facsimile: 212.969.2900

ANNEX A

PLAN OF DISTRIBUTION

The selling stockholders may, from time to time, sell any or all of their shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at fixed or negotiated prices. The selling stockholders may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

The selling stockholders may also engage in short sales against the box, puts and calls and other transactions in our securities or derivatives of our securities and may sell or deliver shares in connection with these trades.

Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved. Any profits on the resale of shares of common stock by a broker-dealer acting as principal might be deemed to be underwriting discounts or commissions under the Securities Act. Discounts, concessions, commissions and similar selling expenses, if any, attributable to the sale of shares will be borne by a selling stockholder. The selling stockholders may agree to indemnify any agent, dealer or broker-dealer that participates in transactions involving sales of the shares if liabilities are imposed on that person under the Securities Act.

The selling stockholders may from time to time pledge or grant a security

interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time under this prospectus after we have filed an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the

pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus and may sell the shares of common stock from time to time under this prospectus after we have filed an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders and any broker-dealers or agents that are involved in selling the shares of common stock may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares of common stock purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act.

We are required to pay certain fees and expenses incident to the registration of the shares of common stock, including certain fees and disbursements of counsel to the selling stockholders. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

The selling stockholders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their shares of common stock, nor is there an underwriter or coordinating broker acting in connection with a proposed sale of shares of common stock by any selling stockholder. If we are notified by any selling stockholder that any material arrangement has been entered into with a broker-dealer for the sale of shares of common stock, if required, we will file a supplement to this prospectus. If the selling stockholders use this prospectus for any sale of the shares of common stock, they will be subject to the prospectus delivery requirements of the Securities Act.

The anti-manipulation rules of Regulation M under the Securities Exchange Act may apply to sales of our common stock and activities of the selling stockholders.

EXHIBIT 99.5

EXHIBIT A

NEITHER THESE SECURITIES NOR THE SECURITIES FOR WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

Warrant No. WD - ___ Number of Shares: _____
(subject to adjustment)

Date of Issuance: _____, 2003

Original Issue Date (as defined in subsection 2(a)(i)(B)): _____, 2003

ASPEN TECHNOLOGY, INC.

COMMON STOCK PURCHASE WARRANT

(Void after _____, 2010)

Aspen Technology, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that _____, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms and conditions set forth below, to purchase from the Company, at any time or from time to time on or after the date of issuance and on or before 5:00 p.m. (Eastern time) on _____, 2010, _____(1) shares of Common Stock, $0.10 par value per share, of the Company ("Common Stock"), at a purchase price of $9.99(2) per share. The shares purchasable upon exercise of this Warrant, and the purchase price per share, each as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Shares" and the "Purchase Price," respectively.

1. EXERCISE

(a) EXERCISE FOR CASH. The Registered Holder may, at its option, elect to exercise this Warrant, in whole or in part and at any time or from time to time, by surrendering this Warrant, with the purchase form appended hereto as EXHIBIT I duly executed by or on behalf of the Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full, in lawful money of the United States, of the Purchase Price payable in respect of the number of Warrant Shares purchased upon such exercise.

(b) CASHLESS EXERCISE

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(1) Warrants will be issued for an aggregate of 2,002,002 shares, assuming stockholder approval of the one-for-three reverse stock split approved by the Board of Directors on June 1, 2003.

(2) Assuming stockholder approval of the one-for-three reverse stock split approved by the Board of Directors on June 1, 2003.

(i) The Registered Holder may, at its option, elect to exercise this Warrant, in whole or in part from time to time, on a cashless basis, by surrendering this Warrant, with the purchase form appended hereto as EXHIBIT I duly executed by or on behalf of the Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, by canceling a portion of this Warrant in payment of the Purchase Price payable in respect of the number of Warrant Shares purchased upon such exercise, PROVIDED that the Registered Holder may not elect to exercise this Warrant on a cashless basis to purchase shares of Common Stock that are the subject of (and may be freely resold under) a then-effective registration statement under the Securities Act of 1933, as amended (the "Act"). In the event of an exercise pursuant to this subsection 1(b), the number of Warrant Shares issued to the Registered Holder shall be determined according to the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where: X = the number of Warrant Shares that shall be issued to the Registered Holder;

Y = the number of Warrant Shares for which this Warrant is being exercised (which shall include both the number of Warrant Shares issued to the Registered Holder and the number of Warrant Shares subject to the portion of the Warrant being cancelled in payment of the Purchase Price);

A = the Fair Market Value (as defined below) of one share of Common Stock; and

B = the Purchase Price then in effect.

(ii) The Fair Market Value per share of Common Stock shall be determined as follows:

(A) If the Common Stock is listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the average of the high and low reported sale prices per share of Common Stock thereon on the trading day immediately preceding the Exercise Date, PROVIDED that if no such price is reported on such day, the Fair Market Value per share of Common Stock shall be determined pursuant to clause (B) below.

(B) If the Common Stock is not listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the amount most recently determined by the Board of Directors of the Company to represent the fair market value per share of the Common Stock (including a determination for purposes of granting Common Stock options or issuing Common Stock under any plan, agreement or arrangement with employees of the Company); and, upon request of the Registered Holder, such Board (or a representative thereof) shall, as promptly as reasonably practicable but in any event not later than 20 days after such request, notify the Registered Holder of the Fair Market Value per share of Common Stock and furnish the Registered Holder with reasonable documentation of such Board's determination of such Fair Market Value. Notwithstanding the foregoing, if the Board has not made such a determination within the three-month period prior to the Exercise Date, then (a) the Board shall make, and

shall provide or cause to be provided to the Registered Holder notice of, a determination of the Fair Market Value per share of the

Common Stock within 15 days of a request by the Registered Holder that it do so, and (b) the exercise of this Warrant pursuant to this subsection 1(b) shall be delayed until such determination is made and notice thereof is provided to the Registered Holder.

(c) EXERCISE DATE. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in subsection 1(a) or 1(b) above (the "Exercise Date"). At such time, the person or persons in whose name or names any certificates for Warrant Shares shall be issuable upon such exercise as provided in subsection 1(d) below shall be deemed to have become the holder or holders of record of the Warrant Shares represented by such certificates. The Company shall use all commercially reasonable efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions.

(d) ISSUANCE OF CERTIFICATES. As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within three Trading Days (as defined below) thereafter, the Company, at its expense, shall cause to be issued in the name of, and delivered to, the Registered Holder, or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of full Warrant Shares to which the Registered Holder shall be entitled upon such exercise plus, in lieu of any fractional share to which the Registered Holder would otherwise be entitled, cash in an amount determined pursuant to Section 3 below; and

(ii) in case such exercise is in part only, a new warrant or warrants of like tenor, calling in the aggregate on the face or faces thereof for the number of Warrant Shares equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of Warrant Shares for which this Warrant was so exercised.

For purposes of this Warrant, "Trading Day" shall mean (a) any day on which the Common Stock is listed on the Nasdaq National Market or another nationally recognized trading system on which the Common Stock is then listed or quoted or (b) if the Common Stock is not then listed or quoted on the Nasdaq National Market or another nationally recognized trading system, then a day on which trading occurs on the New York Stock Exchange (or any successor thereto).

2. ADJUSTMENTS

(a) ADJUSTMENTS TO PURCHASE PRICE FOR DILUTING ISSUES

(i) SPECIAL DEFINITIONS. For purposes of this Section 2, the following definitions shall apply:

(A) "OPTION" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "ORIGINAL ISSUE DATE" shall mean the date on which this Warrant was first issued (or, if this Warrant was issued upon partial exercise of, or in replacement of, another warrant

of like tenor, then the date on which such original warrant was first issued).

(C) "CONVERTIBLE SECURITIES" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "ADDITIONAL SHARES OF COMMON STOCK" shall mean all shares of Common Stock issued (or, pursuant to subsection 2(a)(iii) below, deemed to be issued) by the Company after the Original Issue Date, other than shares of Common Stock issued, issuable or deemed issued:

(I) as a dividend or distribution on Series D-1 Convertible Preferred Stock or Series D-2 Convertible Preferred Stock of the Company;

(II) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by subsection 2(b) or 2(c) below;

(III) to employees or directors of, or consultants to, the Company or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Company and by a majority of the directors of the Company who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or such other trading or quotation facility on which the Common Stock is then listed);

(IV) to Accenture LLP pursuant to agreements in effect on June 1, 2003; or

(V) in connection with any transaction with any strategic investor, vendor or customer, lessor, customer, supplier, marketing partner, developer or integrator or any similar arrangement, in each case the primary purpose of which is not to raise equity capital, PROVIDED such issuance is approved by the Board of Directors of the Company and by a majority of the directors of the Company who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or such other trading or quotation facility on which the Common Stock is then listed).

(ii) NO ADJUSTMENT OF PURCHASE PRICE. No adjustment of the Purchase Price shall be made as the result of the issuance of Additional Shares of Common Stock if the consideration per share (determined pursuant to subsection 2(a)(v)) for such Additional Share of Common Stock issued or deemed to be issued by the Company is equal to or greater than the Purchase Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) ISSUE OF SECURITIES TO BE A DEEMED ISSUE OF ADDITIONAL

(A) If the Company at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock that are specifically excepted from the definition of Additional Shares of Common Stock by subsection 2(a)(i)(D) above) or shall fix a record date for the determination of holders of any class of securities entitled to

receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below, are revised (either automatically pursuant the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Company upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Purchase Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Purchase Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Purchase Price to an amount which exceeds the lower of (i) the Purchase Price on the original adjustment date, or (ii) the Purchase Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock which are specifically excepted from the definition of Additional Shares of Common Stock by subsection 2(a)(i)(D) above), the issuance of which did not result in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below (either because the consideration per share (determined pursuant to subsection 2(a)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Purchase Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date (either automatically pursuant the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security

or (2) any increase or decrease in the consideration payable to the Company upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in subsection 2(a)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged (as applicable) Convertible Security which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below, the Purchase Price shall be readjusted to such Purchase Price as would have obtained had such Option or Convertible Security never been issued.

(E) No adjustment in the Purchase Price shall be made upon the issue of shares of Common Stock or Convertible Securities upon the exercise of Options or the issue of shares of Common Stock upon the conversion or exchange of Convertible Securities.

(iv) ADJUSTMENT OF PURCHASE PRICE UPON ISSUANCE OF ADDITIONAL SHARES OF COMMON STOCK. In the event the Company shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 2(a)(iii)), without consideration or for a consideration per share less than the Purchase Price in effect immediately prior to such issue, then the Purchase Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Purchase Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Purchase Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; PROVIDED that (i) for the purpose of this subsection 2(a)(iv), all shares of Common Stock issuable upon conversion or exchange of shares of Series D Convertible Preferred Stock of the Company, Options or Convertible Securities outstanding immediately prior to such issue or upon exercise of such securities shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon conversion or exchange of such outstanding shares of Series D Convertible Preferred Stock, Options or Convertible Securities and upon the exercise of such outstanding securities shall be determined without giving effect to any adjustments to the conversion or exchange price or conversion or exchange rate of such securities or the exercise price or number of shares issuable upon exercise of such outstanding securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) DETERMINATION OF CONSIDERATION. For purposes of this subsection 2(a), the consideration received by the Company for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) CASH AND PROPERTY. Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Company, excluding amounts paid or payable for accrued

interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Company; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Company.

(B) OPTIONS AND CONVERTIBLE SECURITIES. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to subsection 2(a)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) MULTIPLE CLOSING DATES. In the event the Company shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 60 days, then, upon the final such issuance, the Purchase Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(b) ADJUSTMENT FOR STOCK SPLITS AND COMBINATIONS. If the Company shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Purchase Price then in effect immediately before that subdivision shall be proportionately decreased. If the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Purchase Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become

effective at the close of business on the date the subdivision or combination becomes effective.

(c) ADJUSTMENT FOR CERTAIN DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Purchase Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Purchase Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

PROVIDED, HOWEVER, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Purchase Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Purchase

Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(d) ADJUSTMENT IN NUMBER OF WARRANT SHARES. When any adjustment is required to be made in the Purchase Price pursuant to subsection 2(a), 2(b) or 2(c) above, the number of Warrant Shares purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment.

(e) ADJUSTMENTS FOR OTHER DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company (other than shares of Common Stock) or in cash or other property, then in each such event the Purchase Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such dividend or distribution shall be reduced (effective on such record date) by the then fair market value of the distributed property distributed in respect of one outstanding share of Common Stock, as determined in good faith by the Company's Board of Directors. In such event, the Registered Holder, after receipt of the determination by the Company's Board of Directors, shall have the right to request that the Company select an appraiser (which shall be a nationally recognized investment banking firm or accounting firm), and the Registered Holder shall select an additional such appraiser and such fair market value shall be deemed to equal the average of the values determined by each of the of the appraisers. As an alternative to the foregoing adjustment to the Purchase Price, at the request of the Registered Holder delivered before the thirtieth day after such record date, provision shall be made so that the Registered Holder shall receive upon exercise hereof, in addition to the number of shares of Common Stock issuable hereunder, the kind and amount of securities of the Company, cash or other property that the

Registered Holder would have been entitled to receive had this Warrant been exercised on the date of such event and had the Registered Holder thereafter, during the period from the date of such event to and including the Exercise Date, retained any such securities receivable during such period, giving application to all adjustments called for during such period under this Section 2 with respect to the rights of the Registered Holder.

(f) FUNDAMENTAL TRANSACTIONS. If, at any time while this Warrant is outstanding, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "Fundamental Transaction"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "Alternate Consideration"). The aggregate Exercise Price for this Warrant will not be affected by any such Fundamental Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate

Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction.

(g) ROUNDING OF CALCULATIONS; MINIMUM ADJUSTMENTS. All calculations under this Section 2 shall be made to the nearest one tenth of a cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(h) CERTIFICATE AS TO ADJUSTMENTS. Upon the occurrence of each adjustment pursuant to this Section 2, the Company at its expense will promptly compute such adjustment in accordance with the terms hereof and prepare a certificate describing in reasonable detail such adjustment and the transactions giving rise thereto, including all facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Registered Holder and to the Company's Transfer Agent. The Company shall, as promptly as reasonably practicable after the written request at any time of the Registered Holder (but in any event not later than 20 days thereafter), furnish or cause to be furnished to the Registered Holder a certificate setting forth (i) the Purchase Price then in effect and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property that then would be received upon the exercise of this Warrant.

3. FRACTIONAL SHARES. The Company shall not be required upon the exercise of this Warrant to issue any fractional shares, but shall pay the value thereof to the Registered Holder in cash on the basis of the Fair Market Value per share of Common Stock, determined as follows:

(a) If the Common Stock is listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system

as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the average of the high and low reported sale prices per share of Common Stock thereon on the trading day immediately preceding the Exercise Date, PROVIDED that if no such price is reported on such day, the Fair Market Value per share of Common Stock shall be determined pursuant to clause (b) below.

(b) If the Common Stock is not listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the amount most recently determined by the Board of Directors of the Company to represent the fair market value per share of the Common Stock (including a determination for purposes of granting Common Stock options or issuing Common Stock under any plan, agreement or arrangement with employees of the Company); and, upon request of the Registered Holder, such Board (or a representative thereof) shall, as promptly as reasonably practicable but in any event not later than 20 days after such request, notify the Registered Holder of the Fair Market Value per share of Common Stock and furnish the Registered

Holder with reasonable documentation of such Board's determination of such Fair Market Value.

4. INVESTMENT REPRESENTATIONS. At the time of exercise of this Warrant, the Registered Holder of this Warrant shall be required to represent and warrant that that: (a) it is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended (the "Securities Act"); (b) it has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate; (c) it has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company; and (d) if it is paying the Purchase Price in cash pursuant to subsection 9(a), it is acquiring the shares of Common Stock by exercise hereof for investment and not with a view to the resale or distribution of such shares or any interest therein other than in a transaction that is registered or exempt from registration under the Securities Act; provided that such representation is without prejudice to the Registered Holder's right to dispose of such shares of Common Stock in compliance with applicable securities laws.

5. TRANSFERS, ETC.

(a) The Company shall maintain a register containing the name and address of the Registered Holder of this Warrant. The Registered Holder may change its address as shown on the warrant register by written notice to the Company requesting such change.

(b) Subject to the provisions of this Section 5 and the Investor Rights Agreement, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant with a properly executed assignment (in the form of EXHIBIT II hereto) at the principal office of the Company (or, if another office or agency has been designated by the Company for such purpose, then at such other office or agency).

6. NO IMPAIRMENT. The Company shall not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but shall at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Registered Holder against impairment. The Company's obligations to issue and deliver Warrant Shares subject to and in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Registered Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any person or any action to enforce the same, or any setoff,

counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Registered Holder or any other person of any obligation to the Company or any violation or alleged violation of law by the Registered Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Registered Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Registered Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of this Warrant as required pursuant to the terms hereof.

7. NOTICES OF RECORD DATE, ETC. In the event:

(a) the Company shall take a record of the holders of its Common Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(b) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another corporation (other than a consolidation or merger in which the Company is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Company; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then, and in each such case, the Company will send or cause to be sent to the Registered Holder a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time deliverable upon the exercise of this Warrant) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

8. CHARGES, TAXES AND EXPENSES. The Company shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon exercise of this Warrant. The Company shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of Warrant Shares or Warrants in a name other than that in which this Warrant is registered.

9. RESERVATION OF STOCK. The Company shall at all times reserve and keep available, solely for issuance and delivery upon the exercise of this Warrant, such number of Warrant Shares and other securities, cash and/or property, as from time to time shall be issuable upon the exercise of this Warrant. If the number of shares of Common Stock so reserved is insufficient, in addition to any other remedy available to the Registered Holder, the Company shall take any corporate action that is necessary to make available a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock within 60 days after the occurrence of such deficiency.

10. EXCHANGE OR REPLACEMENT OF WARRANTS

(a) Upon the surrender by the Registered Holder, properly endorsed, to the Company at the principal office of the Company, the Company shall, subject to the provisions of Section 5 above, issue and deliver to or upon the order of the Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of the Registered Holder or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock (or other securities, cash and/or property) then issuable upon exercise of this Warrant.

(b) Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. LIMITATION ON EXERCISE. Notwithstanding anything to the contrary contained herein, the number of shares of Common Stock that may be acquired by the Registered Holder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to ensure that, following such exercise (or other issuance), the total number of shares of Common Stock then

beneficially owned by such Registered Holder and its affiliates and any other individuals or entities whose beneficial ownership of Common Stock would be aggregated with the Registered Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, does not exceed 4.999% (the "Maximum Percentage") of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of such Securities Exchange Act and the rules and regulations promulgated thereunder. Each delivery of a notice of exercise of this Warrant pursuant to Section 1 above will constitute a representation by the Registered Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested in such notice of Exercise is permitted under this paragraph. The Company's obligation to issue shares of Common Stock in excess of the limitation referred to in this Section 11 shall be suspended (and shall not terminate or expire notwithstanding any contrary provisions hereof) until such time, if any, as such shares of Common Stock may be issued in compliance with such limitation. By written notice to the Company, the Registered Holder may waive the provisions of this Section 11 or increase or decrease the Maximum Percentage to any other percentage specified in such notice, but (a) any such waiver or increase will not be effective until the sixty-first day after such notice is delivered to the Company and (b) any such waiver or increase or decrease will apply only to the Registered Holder and not to any other holder of warrants issued by the Company.

12. NOTICES. All notices and other communications from the Company to the Registered Holder in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the address last furnished to the Company in writing by the Registered Holder. All notices and other communications from the Registered Holder to the Company in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the Company at its principal office set forth below. If the Company should at any time change the location of its principal office to a place other than as set forth below, it shall give prompt written notice to the Registered Holder and thereafter all references in this Warrant to the location of its principal office at the particular time shall be as so specified in such notice. All such notices and communications shall be deemed delivered (a) two business days after being sent by certified or registered mail, return receipt requested, postage prepaid, or (b) one business day after being sent via

a reputable nationwide overnight courier service guaranteeing next business day delivery.

13. NO RIGHTS AS STOCKHOLDER. Until the exercise of this Warrant, the Registered Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company. Notwithstanding the foregoing, in the event (a) the Company effects a split of the Common Stock by means of a stock dividend and the Purchase Price of and the number of Warrant Shares are adjusted as of the date of the distribution of the dividend (rather than as of the record date for such dividend) and (b) the Registered Holder exercises this Warrant between the record date and the distribution date for such stock dividend, the Registered Holder shall be entitled to receive, on the distribution date, the stock dividend with respect to the shares of Common Stock acquired upon such exercise, notwithstanding the fact that such shares were not outstanding as of the close of business on the record date for such stock dividend.

14. AMENDMENT. This Warrant may be amended only by a writing signed by both the Company and the Registered Holder (or their respective successors or assigns).

15. CONSTRUCTION. The section headings in this Warrant are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties. The word "including" as used herein shall not be construed so as to exclude any other thing not referred to or described. In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not

in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

16. GOVERNING LAW; WAIVER OF JURY TRIAL. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware. Each of the Company and the Registered Holder hereby irrevocable submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the transaction documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each of the Company and the Registered Holder hereby waives all rights to a trial by jury.

17. FACSIMILE SIGNATURE. This Warrant may be executed by facsimile signature.

EXECUTED as of the Date of Issuance indicated above.

ASPEN TECHNOLOGY, INC.

By:

Title:

ATTEST:

Secretary

EXHIBIT I

PURCHASE FORM

To: Aspen Technology, Inc. Dated: _____

The undersigned is the Registered Holder of Warrant No. WD-____ (the "Warrant") issued by Aspen Technology, Inc., a Delaware corporation (the "Company"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

a. The Warrant is currently exercisable to purchase a total of _____ Warrant Shares.

b. The undersigned Holder hereby exercises its right to purchase _____ Warrant Shares pursuant to the Warrant.

c. The Holder intends that payment of the Purchase Price shall be made as (check one):

____ "Cash Exercise" under subsection 9(a)

____ "Cashless Exercise" under subsection 9(b)

d. If the holder has elected a Cash Exercise, the holder shall pay the sum of $_____ to the Company in accordance with the terms of the Warrant.

e. Pursuant to this exercise, the Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

Following this exercise, the Warrant shall be exercisable to purchase a total of _____ The undersigned represents and warrants to the Company that: (a) it is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended (the "Securities Act"); (b) it has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate; (c) it has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company; and (d) if it is paying the Purchase Price by "Cash Exercise" pursuant to subsection 9(a), it is acquiring the shares of Common Stock by exercise hereof for investment and not with a view to the resale or distribution of such shares or any interest therein other than in a transaction that is registered or exempt from registration under the Securities Act; provided that such representation is without prejudice to the undersigned's right to dispose of such shares of Common Stock in compliance with applicable securities laws.

Dated: Name of Holder:
----------, ----

(Print)

By:

Name:

Title:

(SIGNATURE MUST CONFORM IN ALL RESPECTS TO NAME OF HOLDER AS SPECIFIED ON THE FACE OF THE WARRANT)

EXHIBIT II

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant (No. ____) with respect to the number of shares of Common Stock of Aspen Technology, Inc. covered thereby set forth below, unto:

NAME OF ASSIGNEE	ADDRESS	NO. OF SHARES

Dated:

Signature:

EXHIBIT 99.6

EXHIBIT A

NEITHER THESE SECURITIES NOR THE SECURITIES FOR WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

Warrant No. WB - ___ Number of Shares: _____ (subject to adjustment)

Date of Issuance: _____, 2003

Original Issue Date (as defined in subsection 2(a)(i)(B)): _____, 2003

ASPEN TECHNOLOGY, INC.

COMMON STOCK PURCHASE WARRANT

(Void after _____, 2007(1))

Aspen Technology, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that _____, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms and conditions set forth below, to purchase from the Company, at any time or from time to time on or after the date of issuance and on or before 5:00 p.m. (Eastern time) on _____, 2007, _____(1) shares of Common Stock, $0.10 par value per share, of the Company ("Common Stock"), at a purchase price of $12.24(2) per share. The shares purchasable upon exercise of this Warrant, and the purchase price per share, each as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Shares" and the "Purchase Price," respectively.

1. EXERCISE

(a) EXERCISE FOR CASH. The Registered Holder may, at its option, elect to exercise this Warrant, in whole or in part and at any time or from time to time, by surrendering this Warrant, with the purchase form appended hereto as EXHIBIT I duly executed by or on behalf of the Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full, in lawful money of the United States, of the Purchase Price payable in respect of the number of Warrant Shares purchased upon such exercise.

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(1) Warrants will be issued for an aggregate of 263,681 shares. Warrants for 121,951 shares will expire on February 6, 2007, warrants for 94,487 shares will expire on February 28, 2007, and warrants for 47,243 shares will expire on March 19, 2007, assuming stockholder approval of the one-for-three reverse stock split approved by the Board of Directors on June 1, 2003.

(2) Assuming stockholder approval of the one-for-three reverse stock split approved by the Board of Directors on June 1, 2003.

(b) CASHLESS EXERCISE

(i) The Registered Holder may, at its option, elect to exercise this Warrant, in whole or in part from time to time, on a cashless basis, by surrendering this Warrant, with the purchase form appended hereto as EXHIBIT I duly executed by or on behalf of the Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, by canceling a portion of this Warrant in payment of the Purchase Price payable in respect of the number of Warrant Shares purchased upon such exercise, PROVIDED that the Registered Holder may not elect to exercise this Warrant on a cashless basis to purchase shares of Common Stock that are the subject of (and may be freely resold under) a then-effective registration statement under the Securities Act of 1933, as amended (the "Act"). In the event of an exercise pursuant to this subsection 1(b), the number of Warrant Shares issued to the Registered Holder shall be determined according to the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where: X = the number of Warrant Shares that shall be issued to the Registered Holder;

Y = the number of Warrant Shares for which this Warrant is being exercised (which shall include both the number of Warrant Shares issued to the Registered Holder and the number of Warrant Shares subject to the portion of the Warrant being cancelled in payment of the Purchase Price);

A = the Fair Market Value (as defined below) of one share of Common Stock; and

B = the Purchase Price then in effect.

(ii) The Fair Market Value per share of Common Stock shall be determined as follows:

(A) If the Common Stock is listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the average of the high and low reported sale prices per share of Common Stock thereon on the trading day immediately preceding the Exercise Date, PROVIDED that if no such price is reported on such day, the Fair Market Value per share of Common Stock shall be determined pursuant to clause (B) below.

(B) If the Common Stock is not listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the amount most recently determined by the Board of Directors of the Company to represent the fair market value per share of the Common Stock (including a determination for purposes of granting Common Stock options or issuing Common Stock under any plan, agreement or arrangement with employees of the Company); and, upon request of the Registered Holder, such Board (or a representative thereof) shall, as promptly as reasonably practicable but in any event not later than 20 days after such request, notify the Registered Holder of the Fair Market Value per share of Common Stock and furnish the Registered Holder with reasonable documentation of such Board's determination of such Fair Market Value. Notwithstanding the foregoing, if the Board

has not made such a determination within the three-month period prior to the Exercise

Date, then (a) the Board shall make, and shall provide or cause to be provided to the Registered Holder notice of, a determination of the Fair Market Value per share of the Common Stock within 15 days of a request by the Registered Holder that it do so, and (b) the exercise of this Warrant pursuant to this subsection 1(b) shall be delayed until such determination is made and notice thereof is provided to the Registered Holder.

(c) EXERCISE DATE. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in subsection 1(a) or 1(b) above (the "Exercise Date"). At such time, the person or persons in whose name or names any certificates for Warrant Shares shall be issuable upon such exercise as provided in subsection 1(d) below shall be deemed to have become the holder or holders of record of the Warrant Shares represented by such certificates. The Company shall use all commercially reasonable efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions.

(d) ISSUANCE OF CERTIFICATES. As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within three Trading Days (as defined below) thereafter, the Company, at its expense, shall cause to be issued in the name of, and delivered to, the Registered Holder, or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of full Warrant Shares to which the Registered Holder shall be entitled upon such exercise plus, in lieu of any fractional share to which the Registered Holder would otherwise be entitled, cash in an amount determined pursuant to Section 3 below; and

(ii) in case such exercise is in part only, a new warrant or warrants of like tenor, calling in the aggregate on the face or faces thereof for the number of Warrant Shares equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of Warrant Shares for which this Warrant was so exercised.

For purposes of this Warrant, "Trading Day" shall mean (a) any day on which the Common Stock is listed on the Nasdaq National Market or another nationally recognized trading system on which the Common Stock is then listed or quoted or (b) if the Common Stock is not then listed or quoted on the Nasdaq National Market or another nationally recognized trading system, then a day on which trading occurs on the New York Stock Exchange (or any successor thereto).

2. ADJUSTMENTS

(a) ADJUSTMENTS TO PURCHASE PRICE FOR DILUTING ISSUES

(i) SPECIAL DEFINITIONS. For purposes of this Section 2, the following definitions shall apply:

(A) "OPTION" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "ORIGINAL ISSUE DATE" shall mean the date on which

this Warrant was first issued (or, if this Warrant was issued upon partial exercise of, or in replacement of, another warrant of like tenor, then the date on which such original warrant was first

issued).

(C) "CONVERTIBLE SECURITIES" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "ADDITIONAL SHARES OF COMMON STOCK" shall mean all shares of Common Stock issued (or, pursuant to subsection 2(a)(iii) below, deemed to be issued) by the Company after the Original Issue Date, other than shares of Common Stock issued, issuable or deemed issued:

(I) as a dividend or distribution on Series D-1 Convertible Preferred Stock or Series D-2 Convertible Preferred Stock of the Company;

(II) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by subsection 2(b) or 2(c) below;

(III) to employees or directors of, or consultants to, the Company or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Company and by a majority of the directors of the Company who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or such other trading or quotation facility on which the Common Stock is then listed);

(IV) to Accenture LLP pursuant to agreements in effect on June 1, 2003; or

(V) in connection with any transaction with any strategic investor, vendor or customer, lessor, customer, supplier, marketing partner, developer or integrator or any similar arrangement, in each case the primary purpose of which is not to raise equity capital, PROVIDED such issuance is approved by the Board of Directors of the Company and by a majority of the directors of the Company who are eligible to serve on the Audit Committee of such Board under the then-applicable rules of the Securities and Exchange Commission and the Nasdaq National Market (or such other trading or quotation facility on which the Common Stock is then listed).

(ii) NO ADJUSTMENT OF PURCHASE PRICE. No adjustment of the Purchase Price shall be made as the result of the issuance of Additional Shares of Common Stock if the consideration per share (determined pursuant to subsection 2(a)(v)) for such Additional Share of Common Stock issued or deemed to be issued by the Company is equal to or greater than the Purchase Price in effect immediately prior to

the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) ISSUE OF SECURITIES TO BE A DEEMED ISSUE OF ADDITIONAL SHARES OF COMMON STOCK

(A) If the Company at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock that are specifically excepted from the

definition of Additional Shares of Common Stock by subsection 2(a)(i)(D) above) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below, are revised (either automatically pursuant the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Company upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Purchase Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Purchase Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Purchase Price to an amount which exceeds the lower of (i) the Purchase Price on the original adjustment date, or (ii) the Purchase Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive shares of Common Stock which are specifically excepted from the definition of Additional Shares of Common Stock by subsection 2(a)(i)(D) above), the issuance of which did not result in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below (either because the consideration per share (determined pursuant to subsection 2(a)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Purchase Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date (either automatically pursuant the

provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Company upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in subsection 2(a)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged (as applicable) Convertible Security which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Purchase Price pursuant to the terms of subsection 2(a)(iv) below, the Purchase Price shall be readjusted

to such Purchase Price as would have obtained had such Option or Convertible Security never been issued.

(E) No adjustment in the Purchase Price shall be made upon the issue of shares of Common Stock or Convertible Securities upon the exercise of Options or the issue of shares of Common Stock upon the conversion or exchange of Convertible Securities.

(iv) ADJUSTMENT OF PURCHASE PRICE UPON ISSUANCE OF ADDITIONAL SHARES OF COMMON STOCK. In the event the Company shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 2(a)(iii)), without consideration or for a consideration per share less than the Purchase Price in effect immediately prior to such issue, then the Purchase Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Purchase Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Purchase Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; PROVIDED that (i) for the purpose of this subsection 2(a)(iv), all shares of Common Stock issuable upon conversion or exchange of shares of Series D Convertible Preferred Stock of the Company, Options or Convertible Securities outstanding immediately prior to such issue or upon exercise of such securities shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon conversion or exchange of such outstanding shares of Series D Convertible Preferred Stock, Options or Convertible Securities and upon the exercise of such outstanding securities shall be determined without giving effect to any adjustments to the conversion or exchange price or conversion or exchange rate of such securities or the exercise price or number of shares issuable upon exercise of such outstanding securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) DETERMINATION OF CONSIDERATION. For purposes of this subsection 2(a), the consideration received by the Company for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) CASH AND PROPERTY. Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Company, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Company; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Company.

(B) OPTIONS AND CONVERTIBLE SECURITIES. The consideration per share received by

the Company for Additional Shares of Common Stock deemed to have been issued pursuant to subsection 2(a)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) MULTIPLE CLOSING DATES. In the event the Company shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 60 days, then, upon the final such issuance, the Purchase Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(b) ADJUSTMENT FOR STOCK SPLITS AND COMBINATIONS. If the Company shall at any time or from time to time after the Original Issue Date effect

a subdivision of the outstanding Common Stock, the Purchase Price then in effect immediately before that subdivision shall be proportionately decreased. If the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Purchase Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(c) ADJUSTMENT FOR CERTAIN DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Purchase Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Purchase Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

PROVIDED, HOWEVER, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Purchase Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Purchase Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(d) ADJUSTMENT IN NUMBER OF WARRANT SHARES. When any adjustment is required to be made in the Purchase Price pursuant to subsection 2(a), 2(b) or 2(c) above, the number of Warrant Shares purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment.

(e) ADJUSTMENTS FOR OTHER DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company (other than shares of Common Stock) or in cash or other property, then in each such event the Purchase Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such dividend or distribution shall be reduced (effective on such record date) by the then fair market value of the distributed property distributed in respect of one outstanding share of Common Stock, as determined in good faith by the Company's Board of Directors. In such event, the Registered Holder, after receipt of the determination by the Company's Board of Directors, shall have the right to request that the Company select an appraiser (which shall be a nationally recognized investment banking firm or accounting firm), and the Registered Holder shall select an additional such appraiser and such fair market value shall be deemed to equal the average of the values determined by each of the of the appraisers. As an alternative to the foregoing adjustment to the

Purchase Price, at the request of the Registered Holder delivered before the thirtieth day after such record date, provision shall be made so that the Registered Holder shall receive upon exercise hereof, in addition to the number of shares of Common Stock issuable hereunder, the kind and amount of securities of the Company, cash or other property that the Registered Holder would have been entitled to receive had this Warrant been exercised on the date of such event and had the Registered Holder thereafter, during the period from the date of such event to and including the Exercise Date, retained any such securities receivable during such period, giving application to all adjustments called for during such period under this Section 2 with respect to the rights of the Registered Holder.

(f) FUNDAMENTAL TRANSACTIONS. If, at any time while this Warrant is outstanding, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "Fundamental Transaction"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "Alternate Consideration"). The aggregate Exercise Price for this Warrant will not be affected by any such Fundamental Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner

reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. At the Holder's request, any successor to the Company or surviving entity in such Fundamental Transaction shall issue to the Holder a new warrant evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof and consistent with the foregoing provisions, PROVIDED that (i) the covenant set forth in Section 9 relating to the reservation of Common Stock shall be replaced with a covenant to the effect that sufficient Alternate Consideration shall be reserved for issuance upon exercise of the Warrants and (ii) the terms of subsection 2(a) shall be deleted. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (f) and ensuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction. If any Fundamental Transaction constitutes or results in a "Rule 13e-3 transaction" within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, or any other transaction in which holders of Common Stock receive (or the Registered Holder would receive a warrant to acquire) consideration other than freely tradable securities of a public reporting company, then, at the request of the Holder delivered before the thirtieth day after such Fundamental Transaction, the Company (or any such successor or surviving entity) will purchase this Warrant from the Holder for a purchase price, payable in cash within five Trading Days after such request (or, if later, on the effective date of the Fundamental Transaction), equal to the value of the remaining unexercised portion of this Warrant on the date of such request, which value shall be determined

by use of the Black and Scholes Option Pricing Model reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request and (ii) an expected volatility equal to the lesser of 50% and the expected volatility then used by the Company in valuing options for purposes of preparing its consolidated financial statements.

(g) ROUNDING OF CALCULATIONS; MINIMUM ADJUSTMENTS. All calculations under this Section 2 shall be made to the nearest one tenth of a cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(h) CERTIFICATE AS TO ADJUSTMENTS. Upon the occurrence of each adjustment pursuant to this Section 2, the Company at its expense will promptly compute such adjustment in accordance with the terms hereof and prepare a certificate describing in reasonable detail such adjustment and the transactions giving rise thereto, including all facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Registered Holder and to the Company's Transfer Agent. The Company shall, as promptly as reasonably practicable after the written request at any time of the Registered Holder (but in any event not later than 20 days thereafter), furnish or cause to be furnished to the Registered Holder a certificate setting forth (i) the Purchase Price then in effect and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property that then would be received upon the exercise of this Warrant.

3. FRACTIONAL SHARES. The Company shall not be required upon the exercise of this Warrant to issue any fractional shares, but shall pay the value thereof to the Registered Holder in cash on the basis of the Fair Market Value per share of Common Stock, determined as follows:

(a) If the Common Stock is listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the average of the high and low reported sale prices per share of Common Stock thereon on the trading day immediately preceding the Exercise Date, PROVIDED that if no such price is reported on such day, the Fair Market Value per share of Common Stock shall be determined pursuant to clause (b) below.

(b) If the Common Stock is not listed on a national securities exchange, the Nasdaq National Market or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the amount most recently determined by the Board of Directors of the Company to represent the fair market value per share of the Common Stock (including a determination for purposes of granting Common Stock options or issuing Common Stock under any plan, agreement or arrangement with employees of the Company); and, upon request of the Registered Holder, such Board (or a representative thereof) shall, as promptly as reasonably practicable but in any event not later than 20 days after such request, notify the Registered Holder of the Fair Market Value per share of Common Stock and furnish the Registered Holder with reasonable documentation of such Board's determination of such Fair Market Value.

4. INVESTMENT REPRESENTATIONS. At the time of exercise of this Warrant, the Registered Holder of this Warrant shall be required to represent and warrant that that: (a) it is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended (the "Securities Act"); (b) it has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate; (c) it has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its

investment in the Company; and (d) if it is paying the Purchase Price in cash pursuant to subsection 9(a), it is acquiring the shares of Common Stock by exercise hereof for investment and not with a view to the resale or distribution of such shares or any interest therein other than in a transaction that is registered or exempt from registration under the Securities Act; provided that such representation is without prejudice to the Registered Holder's right to dispose of such shares of Common Stock in compliance with applicable securities laws.

5. TRANSFERS, ETC.

(a) The Company shall maintain a register containing the name and address of the Registered Holder of this Warrant. The Registered Holder may change its address as shown on the warrant register by written notice to the Company requesting such change.

(b) Subject to the provisions of this Section 5 and the Investor Rights Agreement, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant with a properly executed assignment (in the form of EXHIBIT II hereto) at the principal office of the Company (or, if another office or agency has been designated by the Company for such purpose, then at such other office or agency).

6. NO IMPAIRMENT. The Company shall not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but shall at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Registered Holder against impairment. The Company's obligations to issue and deliver Warrant Shares subject to and in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Registered Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Registered

Holder or any other person of any obligation to the Company or any violation or alleged violation of law by the Registered Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Registered Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Registered Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of this Warrant as required pursuant to the terms hereof.

7. NOTICES OF RECORD DATE, ETC. In the event:

(a) the Company shall take a record of the holders of its Common Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(b) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another corporation (other than a consolidation or merger in which the Company is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or

property), or any transfer of all or substantially all of the assets of the Company; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then, and in each such case, the Company will send or cause to be sent to the Registered Holder a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time deliverable upon the exercise of this Warrant) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

8. CHARGES, TAXES AND EXPENSES. The Company shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon exercise of this Warrant. The Company shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of Warrant Shares or Warrants in a name other than that in which this Warrant is registered.

9. RESERVATION OF STOCK. The Company shall at all times reserve and keep available, solely for issuance and delivery upon the exercise of this Warrant, such number of Warrant Shares and other securities, cash and/or property, as from time to time shall be issuable upon the exercise of this Warrant. If the number of shares of Common Stock so reserved is insufficient, in addition to any other remedy available to the Registered Holder, the Company shall take any corporate action that is necessary to make available a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock within 60 days after the occurrence of such deficiency.

10. EXCHANGE OR REPLACEMENT OF WARRANTS

(a) Upon the surrender by the Registered Holder, properly endorsed, to the Company at the

principal office of the Company, the Company shall, subject to the provisions of Section 5 above, issue and deliver to or upon the order of the Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of the Registered Holder or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock (or other securities, cash and/or property) then issuable upon exercise of this Warrant.

(b) Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. LIMITATION ON EXERCISE. Notwithstanding anything to the contrary contained herein, the number of shares of Common Stock that may be acquired by the Registered Holder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to ensure that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Registered Holder and its affiliates and any other individuals or entities whose beneficial ownership of Common Stock would be

aggregated with the Registered Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, does not exceed 4.999% (the "Maximum Percentage") of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of such Securities Exchange Act and the rules and regulations promulgated thereunder. Each delivery of a notice of exercise of this Warrant pursuant to Section 1 above will constitute a representation by the Registered Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested in such notice of Exercise is permitted under this paragraph. The Company's obligation to issue shares of Common Stock in excess of the limitation referred to in this Section 11 shall be suspended (and shall not terminate or expire notwithstanding any contrary provisions hereof) until such time, if any, as such shares of Common Stock may be issued in compliance with such limitation. By written notice to the Company, the Registered Holder may waive the provisions of this Section 11 or increase or decrease the Maximum Percentage to any other percentage specified in such notice, but (a) any such waiver or increase will not be effective until the sixty-first day after such notice is delivered to the Company and (b) any such waiver or increase or decrease will apply only to the Registered Holder and not to any other holder of warrants issued by the Company.

12. NOTICES. All notices and other communications from the Company to the Registered Holder in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the address last furnished to the Company in writing by the Registered Holder. All notices and other communications from the Registered Holder to the Company in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the Company at its principal office set forth below. If the Company should at any time change the location of its principal office to a place other than as set forth below, it shall give prompt written notice to the Registered Holder and thereafter all references in this Warrant to the location of its principal office at the particular time shall be as so specified in such notice. All such notices and communications shall be deemed delivered (a) two business days after being sent by certified or registered mail, return receipt requested, postage prepaid, or (b) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery.

13. NO RIGHTS AS STOCKHOLDER. Until the exercise of this Warrant, the Registered Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company. Notwithstanding the

foregoing, in the event (a) the Company effects a split of the Common Stock by means of a stock dividend and the Purchase Price of and the number of Warrant Shares are adjusted as of the date of the distribution of the dividend (rather than as of the record date for such dividend) and (b) the Registered Holder exercises this Warrant between the record date and the distribution date for such stock dividend, the Registered Holder shall be entitled to receive, on the distribution date, the stock dividend with respect to the shares of Common Stock acquired upon such exercise, notwithstanding the fact that such shares were not outstanding as of the close of business on the record date for such stock dividend.

14. AMENDMENT. This Warrant may be amended only by a writing signed by both the Company and the Registered Holder (or their respective successors or assigns).

15. CONSTRUCTION. The section headings in this Warrant are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties. The word "including" as used herein shall not be construed so as to exclude any other thing not referred to or described. In case any one or more of the provisions of this Warrant shall be

invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

16. GOVERNING LAW; WAIVER OF JURY TRIAL. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware. Each of the Company and the Registered Holder hereby irrevocable submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the transaction documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each of the Company and the Registered Holder hereby waives all rights to a trial by jury.

17. FACSIMILE SIGNATURE. This Warrant may be executed by facsimile signature.

EXECUTED as of the Date of Issuance indicated above.

ASPEN TECHNOLOGY, INC.

By: ----------

Title: ----------

ATTEST:

Secretary

EXHIBIT I

PURCHASE FORM

To: Aspen Technology, Inc. Dated: _____

The undersigned is the Registered Holder of Warrant No. WB-____ (the "Warrant") issued by Aspen Technology, Inc., a Delaware corporation (the "Company"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

a. The Warrant is currently exercisable to purchase a total of _____ Warrant Shares.

b. The undersigned Holder hereby exercises its right to purchase _____ Warrant Shares pursuant to the Warrant.

c. The Holder intends that payment of the Purchase Price shall be made as (check one):

____ "Cash Exercise" under subsection 9(a)

____ "Cashless Exercise" under subsection 9(b)

d. If the holder has elected a Cash Exercise, the holder shall pay the sum of $_____ to the Company in accordance with the terms of the Warrant.

e. Pursuant to this exercise, the Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

Following this exercise, the Warrant shall be exercisable to purchase a total of _____ The undersigned represents and warrants to the Company that: (a) it is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended (the "Securities Act"); (b) it has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate; (c) it has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company; and (d) if it is paying the Purchase Price by "Cash Exercise" pursuant to subsection 9(a), it is acquiring the shares of Common Stock by exercise hereof for investment and not with a view to the resale or distribution of such shares or any interest therein other than in a transaction that is registered or exempt from registration under the Securities Act; provided that such representation is without prejudice to the undersigned's right to dispose of such shares of Common Stock in compliance with applicable securities laws.

Dated: ----------, ----

Name of Holder:

(Print)

By:

Name:

Title:

(SIGNATURE MUST CONFORM IN ALL RESPECTS TO NAME OF HOLDER AS SPECIFIED ON THE FACE OF THE WARRANT)

EXHIBIT II

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned under the attached Warrant (No. ____) with respect to the number of shares of Common Stock of Aspen Technology, Inc. covered thereby set forth below, unto:

NAME OF ASSIGNEE	ADDRESS	NO. OF SHARES

Dated:

Signature:

Exhibit 99.7

SENIOR SUBORDINATED PROMISSORY NOTE

$_____ _____, 2003

FOR VALUE RECEIVED, Aspen Technology, Inc., a Delaware corporation (the "Company"), hereby unconditionally promises to pay to the order of _____, a _____ corporation (the "Holder"), in lawful money of the United States of America and in immediately available funds, the principal sum of _____ Dollars ($_____), together with accrued and unpaid interest thereon, each due and payable on the dates and in the manner set forth below. This is one of a series of Senior Subordinated Promissory Notes issued by the Company on or about _____, 200_ (each a "Note," and collectively the "Notes").

1. PRINCIPAL REPAYMENT. The outstanding principal amount of this Note shall be due and payable on the earlier to occur of (a) the fifth anniversary of the date of this Note and (b) the date on which an Event of Default (as defined below) has occurred (the "Maturity Date"). This Note may be prepaid in whole or in part by the Company at any time without premium or penalty.

2. INTEREST RATE AND PAYMENTS. The Company unconditionally promises to pay to the order of the Holder interest on the unpaid principal amount of this Note for the period from and including the date hereof and continuing until the repayment of the entire unpaid principal amount of this Note at a per annum interest rate equal to 10% (but in no event to exceed the maximum rate permitted under applicable provisions of law). Interest shall accrue (but not compound) daily and be calculated on the basis of a 365-day year for the actual number of days elapsed. Interest shall accrue on the principal amount of this Note until the earlier to occur (the "Interest Payment Commencement Date") of (a) June 15, 2005 or (b) the payment in full of all obligations (whether prepaid, interest or otherwise) owing under the Debentures (as defined below), after which date all such accrued interest shall be payable in eight equal quarterly installments, beginning with the last day of the calendar quarter next occurring after the Interest Payment Commencement Date (I.E., March 31, June 30, September 30 or December 31). All payments of interest accruing on the principal amount of this Note from and after the Interest Payment Commencement Date shall be due and payable quarterly in arrears, beginning with the last day of the calendar quarter next occurring after the Interest Payment Commencement Date (I.E., March 31, June 30, September 30 or December 31) and thereafter on the last day of each calendar quarter thereafter, until the Maturity Date, when all unpaid interest and principal shall be due and payable. Whenever any payment is made on any of the Notes, a proportionate payment shall be made on all other Notes (based on the aggregate principal amount of, and accrued interest on, each Note).

3. PLACE OF PAYMENT. When and as required hereunder, all amounts payable hereunder (whether principal, interest or otherwise) shall be made in lawful money of the United States of America, and, with respect to any such payment on this Note in excess of $500,000 in any instance, (i) in immediately available funds and (ii) by wire transfer to an account at a commercial bank, which account shall be identified in a notice to the Company delivered in connection with the delivery of this Note or in any subsequent notice in writing provided to the Company by the Holder (which subsequent notice shall only be effective with respect to payments becoming due and payable more than five business days following the delivery of such notice). All amounts payable under this Note shall be paid free and clear of, and without reduction by reason of, any deduction, set-off or counterclaim.

4. APPLICATION OF PAYMENTS. All payments received with respect to this Note shall be applied first to costs and expenses of collection payable hereunder, then against accrued interest, and thereafter against the outstanding principal balance hereof. Any amount not paid when due (including any principal repayment or interest payment), whether at stated maturity, by acceleration or otherwise,

shall bear

interest at an interest rate of 13.5% per annum (but in no event to exceed the maximum rate permitted under applicable provisions of law) until paid in full.

5. SUBORDINATION

(a) Each of the Company and the Holder acknowledge and agree that the indebtedness evidenced by this Note is subordinated and junior in right of payment to the prior payment in full of all Senior Debt to the extent and in the manner provided in this Section 5. For purposes of this Note, "Senior Debt" means the principal of (and premium, if any) and interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) on, all contingent obligations arising with respect to letters of credit, foreign exchange contracts and bankers' acceptances issued in connection with, and all fees and other amounts payable in connection with indebtedness of the Company for money borrowed from, or evidenced by credit or loan agreements, notes or similar instruments with or in favor of, one or more commercial banks under secured arrangements principally for working capital purposes, whether outstanding on the date of this Note or hereafter arising, in an aggregate principal amount not to exceed $50,000,000 (the "Senior Debt Cap") outstanding at any time. "Senior Debt" shall include, without limitation (but subject to the Senior Debt Cap), all indebtedness, liabilities and other obligations of the Company under (x) the Loan and Security Agreement dated January 30, 2003, between Silicon Valley Bank, as lender, and the Company, Aspentech, Inc., a Texas corporation, and Hyprotech Company, a corporation organized under the laws of Nova Scotia, Canada, as borrowers, and (y) the Export-Import Bank Loan and Security Agreement, dated as of January 30, 2003, between Silicon Valley Bank, as lender and the Company and Aspentech, Inc., a Texas corporation, in each case as such agreements may be amended, restated, extended, renewed, supplemented or otherwise modified from time to time (the facilities and documents described in clauses (x) and (y) above, are herein referred to collectively as the "SVB Documents").

(b) Notwithstanding anything to the contrary, all indebtedness under this Note shall constitute "Senior Debt" under the Indenture, dated as of June 17, 1998, as amended and in effect from time to time, between the Company and The Chase Manhattan Bank (and it successors and assigns), as trustee, with respect to the 5 1/4% Subordinated Convertible Debentures due June 15, 2005 (the "Debentures").

(c) In the event of any insolvency, receivership, conservatorship, reorganization, bankruptcy, marshaling of assets and liabilities or similar proceedings or any liquidation or winding up of or relating to the Company, whether voluntary or involuntary (collectively "Proceedings"), all Senior Debt shall be entitled to be paid in full, and all obligations under the documents creating or evidencing the Senior Debt shall be satisfied, before any payment shall be made on account of the principal of, or interest on, this Note. In the event of any Proceedings, after payment in full of all sums owing on the Senior Debt and the satisfaction of all obligations under the documents creating or evidencing the Senior Debt, the Holder shall be entitled to be paid from the remaining assets of the Company. Notwithstanding anything to the contrary contained in the Note, no payments of principal under the Note shall be payable at any time that Senior Debt is outstanding unless: (i) the Holder has issued to the Senior Holder a Holder's Notice (defined below), and (ii) the Blockage Expiration (defined below) shall have occurred.

(d) The Company shall be entitled to make scheduled payments of interest under the Note provided that (i) each Senior Holder has consented to such payment in writing, or (ii)(x) there has not occurred and is

continuing any default in the payment of the principal of or any interest on any

Senior Debt, both before and after giving effect to such payment of interest, and (y) there has not occurred and is continuing any other event of default under the documents creating or evidencing any Senior Debt, both before and after giving effect to such payment of interest. During (i) a default in the payment of principal of or any interest on any Senior Debt, or (ii) any other event of default under the documents creating or evidencing any Senior Debt, payments of interest under this Note may be made (x) upon each Senior Holder's written consent, or (y) absent such consent, only as provided in paragraphs 5(c), (e) and (f) below.

(e) If, after an Event of Default under this Note or at any other time Holder wishes to receive payment of this Note in accordance with its terms (whether at stated maturity or by acceleration), the Holder desires to exercise any remedies against the Company or collect any payments on this Note, the Holder shall provide Silicon Valley Bank (so long as it is a holder of Senior Debt) and each holder of at least $5,000,000 outstanding principal amount (including contingent obligations with respect to outstanding letters of credit) of Senior Debt (each a "Senior Holder") with a written notice (the "Holder's Notice") to such effect. Each Senior Holder shall, upon receipt of the Holder's Notice, elect at its sole option to: (i) deliver a Blockage Notice (as defined below) to the Holder or (ii) deliver a notice (the "Exercise Notice") that the Holder may exercise remedies. Failure of a Senior Holder to respond to the Holder's Notice within thirty (30) days shall be deemed that such Senior Holder has delivered a Blockage Notice to the Holder.

(f) If, at any time, there is an event of default under the Senior Debt or a Senior Holder has received a Holder's Notice, such Senior Holder may deliver written notice to the Holder (a "Blockage Notice"). The Holder shall not be entitled to receive any payments under this Note (except scheduled interest payments permitted under the first sentence of Section 5(d) hereof), and shall not commence any action or proceeding against the Company to enforce or collect any amounts due under this Note, to obtain possession of any property of the Company, to exercise control over property of the Company or to create, perfect, or enforce any lien against any property of the Company in each case unless (i) the Holder shall have delivered to each of the Senior Holders a Holder's Notice, and (ii) the Blockage Expiration shall have occurred. The "Blockage Expiration" shall mean the earliest to occur of: (w) the Senior Debt is paid in full and the Senior Holders' commitment to lend has been terminated, (x) each Senior Holder rescinds in writing the Blockage Notice which has been delivered or deemed delivered, (y) the expiration of the Blockage Period, and (z) the Holder's receipt of an Exercise Notice issued by each Senior Holder. The "Blockage Period" shall commence on the date that a Blockage Notice is delivered or deemed delivered to the Holder, and expire on the earlier to occur of (I) the later to occur of (A) June 30, 2005, and (B) 180 days following the date that a Blockage Notice is delivered or deemed to have been delivered; PROVIDED THAT if prior to the expiration of such 180-day period, a Senior Holder has accelerated the time for payment of the obligations under the Senior Debt, commenced a judicial proceeding or non-judicial action to collect or enforce the Senior Debt or exercised rights with respect to the Senior Holder's collateral and such Senior Holder continues to diligently pursue same, or a Proceeding respecting the Company is commenced, then such period shall be extended during the continuation of such proceeding, action, exercise or Proceeding until the Senior Debt is paid in full and satisfied and the Senior Holders' commitment to lend has been terminated, and (II) each Senior Holder's

written consent to the termination of the Blockage Period. The Senior Holders may not deliver (or be deemed to deliver) more than one Blockage Notice in any twelve-month period.

(g) In the event that notwithstanding the provisions of this Section 5, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or debentures (other than debentures that are subordinate and junior in right of payment to the payment

in full of all Senior Debt outstanding at the time of the issue of such debentures), shall be received by the Holder or for its benefit in connection with any Proceedings before all Senior Debt is paid in full, such payment or distribution shall be paid over to the holders of such Senior Debt or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Debt may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the Senior Debt remaining unpaid until all such Senior Debt shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

(h) Subject to the prior payment in full of the Senior Debt, the Holder shall be subrogated to the rights of the Senior Holders to receive payments or distributions of any kind or character, whether in cash or property or securities of the Company, applicable to the Senior Debt, until the Note has been paid in full. No such payments or distributions to the Holder shall be deemed a payment by the Company on account of Senior Debt.

(i) In the event of a Proceeding with respect to the Company, unless and until the Senior Debt is fully paid in cash and Senior Holder's obligation to lend any funds to the Company has been terminated, Holder irrevocably appoints and authorizes Senior Holder, as Holder's authorized agent, at the election of the Senior Holder, to file the appropriate claim or claims in respect of the indebtedness arising under the Note on behalf of Holder if Holder does not do so prior to 30 days before the expiration of the time to file claims in such proceeding. The Holder may not vote to accept or reject any plan of reorganization or arrangement with respect to the Company, or otherwise vote Holder's claims in respect of any indebtedness arising under the Note, in any manner that would adversely affect the Senior Holder in any material respect, or in any manner that is inconsistent with the terms of Section 5 of this Note.

(j) No amendment of the documents evidencing or relating to this Note shall directly or indirectly modify the provisions of the Note in any manner which might terminate or impair the subordination of the indebtedness arising under the Note. By way of example, such instruments shall not be amended to (i) increase the rate of interest with respect to the Note, or (ii) accelerate the payment of the principal or interest or any other portion of the indebtedness arising under the Note.

(k) The above subordination provisions shall in no way be affected, modified, waived or revoked by the occurrence of any event of default hereunder or any acceleration of the maturity of this Note in consequence thereof. The provisions of this Section 5 are intended solely for the purpose of defining the relative rights of the holders of Senior Debt on the one hand and the Holder on the other hand. Nothing contained in this Note shall impair, as between the Company and the Holder, the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Note in accordance with the terms of this Note.

(l) The rights of any holder of Senior Debt to enforce the

subordination of the indebtedness evidenced by this Note shall not be prejudiced or impaired by any act or failure to act by the Company or its failure to comply with the terms of this Note. Upon request of any holder of Senior Debt, the Holder shall execute a subordination agreement in such form as is reasonably required by such holder of Senior Debt and consistent with the terms hereof (each, an "Intercreditor Agreement").

6. REPRESENTATIONS AND WARRANTIES. The Company represents and warrants to the Holder that:

(a) The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) The Company has full corporate power and authority to execute and deliver this Note and to perform all of the obligations hereunder, and all necessary corporate action has been taken by the Company to execute and deliver this Note.

(c) This Note constitutes the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with its terms.

7. COVENANTS. The Company covenants and agrees with the Holder that from the date hereof until the payment in full of all amounts due under this Note:

(a) Promptly after the Company knows or has reason to believe that any Event of Default (or any event or circumstance that, with the giving of notice and/or the lapse of time, would become an Event of Default) has occurred, the Company shall deliver to the Holder a notice thereof describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that the Holder has taken or proposes to take with respect thereto.

(b) The Company shall not, directly or indirectly, make, create, incur, assume or suffer to exist any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of its property, whether now owned or hereafter acquired, except (i) with respect to the Senior Debt, (ii) "Permitted Liens," as such term is defined in the SVB Documents as in effect on May 31, 2003 (other than clause (iv) thereof), (iii) liens securing capitalized leases and purchase money indebtedness in an aggregate principal amount not to exceed $25,000,000 at any time outstanding; and (iv) liens in the New Accenture Collateral (as that term is defined in Section 2.3 of the SVB Documents as in effect on May 31, 2003) securing indebtedness in an amount not to exceed the amount of such indebtedness outstanding as of the date hereof.

(c) The Company shall not create, incur, assume, guaranty, or become liable with respect to (contingently or otherwise), any indebtedness for borrowed money (excluding (i) any such indebtedness of the Company under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements intended to protect the Company against fluctuations in interest or currency exchange rates, and (ii)any such indebtedness of the Company as lessee under capitalized leases or for purchase money indebtedness, indebtedness of the Company under commodity price agreements or arrangements and indebtedness of the Company with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the Company (in each case under this subparagraph 5(c)(ii), where there is a corresponding offsetting asset securing such indebtedness)), except for:

(i) any Senior Debt;

(ii) indebtedness with respect to the Notes, which includes all accrued interest hereunder and all eligible additions to principal;

(iii) indebtedness issued to refinance the Debentures, PROVIDED that such indebtedness (A) ranks pari-passu or junior to the Notes, (B) does not provide for any payment of principal thereof prior to the payment in full of this Note, other than as a result of an acceleration upon an event of default (which acceleration would constitute an Event of Default hereunder as provided in Section 8(g) below), (C) does not provide (or provision is otherwise made by the Company for the benefit of the Holder in a manner reasonably acceptable to the Holder) for any payment of interest at any time at which any interest accrued and due on this Note, or any interest added to the principal hereof has not been paid in full and (D) contains

subordination provisions not more favorable to the holder of such indebtedness that the provisions of Section 5 above;

(iv) guarantees of the debt and/or performance obligations of subsidiaries on an unsecured basis incurred in the ordinary course of business in a manner consistent with past practice and in an amount equal to or less than $8,000,000 in the aggregate outstanding at any time;

(v) the Company's reimbursement obligations to Fleet National Bank, or its successors and assigns, with respect to letters of credit, hedge agreements and foreign exchange forward contracts issued by Fleet National Bank, or its successors and assigns, in an aggregate face amount not exceeding $3,000,000; and

(vi) the Company's secured guaranty of letters of credit issued on behalf of AspenTech UK Limited in an amount not to exceed the face amount of UK 1,300,000 pounds.

(d) The Company shall not directly or indirectly make any payment in respect of any indebtedness for money borrowed (except for Senior Debt) at any time that a Blockage Period has commenced and the Blockage Expiration with respect thereto has not occurred.

8. DEFAULT. Each of the following events shall constitute an "Event of Default" hereunder:

(a) the Company defaults in the payment of the principal, interest or any other amounts payable owing under this Note when due (whether at stated maturity or otherwise), and, in the case of an interest payment, fails to make any such payment within 10 days after the date the same becomes due and payable;

(b) the Company or any material subsidiary files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or seeks the appointment of a custodian, receiver, trustee (or other similar official) of the Company or any material subsidiary or all or any substantial portion of the Company's or any material subsidiary's assets, or makes any assignment for the benefit of creditors or takes any action in furtherance of any of the foregoing, or fails to generally pay its debts as they become due;

(c) an involuntary petition is filed, or any proceeding or case is commenced, against the Company or any material subsidiary (unless such proceeding or case is dismissed or discharged within 60 days of the filing or commencement thereof) under any bankruptcy, reorganization, arrangement, insolvency, adjustment of debt, liquidation or moratorium statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is applied for, appointed for the Company or any material subsidiary or to take possession, custody or control of any property of the Company or any material subsidiary, or an order for relief is entered against the Company or any material subsidiary in any of the foregoing;

(d) any representation, warranty or certification made in Section 6 hereof is not true or correct in any material respect when made;

(e) the occurrence of a Change of Control (for purposes of this clause (e), (1) the term "Change of Control" shall mean (i) the acquisition by any Person of beneficial

ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such Person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in the election of directors (any shares of voting stock of which such person or group is the beneficial owner that are not then outstanding being deemed outstanding for purposes of calculating such percentage) other than any such acquisition by the Company, any subsidiary of the Company or any employee benefit plan of the Company or (ii) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company, or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company to another Person (other than (a) any such transaction (x) which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which the holders of common stock of the Company immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction and (b) any merger which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of common stock of the Company into solely shares of common stock of the Company); and (2) the term "Person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Securities Exchange Act of 1934, as in effect on the date hereof, PROVIDED that the term "Person" shall not include Advent International or any entity or individual that, directly or indirectly, controls, is controlled by, or is under common control with Advent International;

(f) the Company shall fail to perform any covenant, condition or agreement (other than as may be covered by clause (a) above) under this Note and such failure continues for more than 30 days after the date on which the Holder has given written notice of such failure to the Company; or

(g) the Company or any material subsidiary shall default in the performance of any of its obligations under, or shall otherwise breach, any covenant in any agreement(s) or instrument(s) for borrowed money (other than Senior Debt), and as a result of such default or breach, payment of

obligations thereunder totaling in excess of $3,000,000 in the aggregate shall have been accelerated, or for any other reason, the payment of obligations for money borrowed totaling in excess of $3,000,000 in the aggregate shall have been accelerated.

9. REMEDIES. Upon the occurrence and during the continuance of an Event of Default hereunder, subject to the provisions of Section 5 above, all unpaid principal, accrued interest and other amounts owing hereunder shall,

(a) at the election of the Holder, with respect to an Event of Default described in clause (a), (d), (e) or (f) of Section 8,

(b) automatically, with respect to an Event of Default described in clause (b) or (c) of Section 8,

(c) at the election of holders of either 33-1/3% of the outstanding principal amount of the Notes (including any accrued interest added to the principal thereof) or $5,000,000 in aggregate principal amount of Notes (including such accrued interest), with respect to an Event of Default described in clause (g) of Section 8,

be immediately due, payable and collectible by the Holder pursuant to applicable law. In addition, (i) any and all unpaid principal, interest or other amounts due under this Note shall thereafter bear interest at the maximum rate set forth in Section 4 above; and (ii) the Holder may exercise any and all rights and remedies it may have under this Note, or under applicable law. All rights and remedies shall be cumulative and not exclusive. The failure of the Holder to exercise all or any of its rights, remedies, powers or privileges hereunder or any other agreement or applicable law in any instance shall not constitute a waiver thereof in that or any other instance.

10. EXPENSES. The Company agrees to and shall pay to the Holder, within 10 days after demand and presentation of invoices, any and all costs and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Holder in connection with the collection or enforcement of amounts outstanding hereunder or for enforcing the Holder's rights or remedies hereunder.

11. WAIVERS. The Company, for itself and its legal representatives, successors and assigns, hereby expressly waives demand, protest, presentment, notice of dishonor, notice of acceptance, and notice of protest, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and agrees that any extension, renewal or postponement of the time of payment or any other indulgence to, or release of any person now or hereafter obligated for the payment of this Note shall not affect the Company's liability hereunder.

12. GOVERNING LAW. This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

13. SUCCESSORS AND ASSIGNS. This Note and all obligations of the Company hereunder shall be binding upon the successors and assigns of the Company, and shall, together with the rights and remedies of the Holder hereunder, inure to the benefit of the Holder, any future holder of this Note and their respective successors and assigns, PROVIDED, HOWEVER, the Company may not transfer or assign its rights or obligations hereunder without the express written consent of the Holder and any purported transfer or assignment by the Company without the Holder's written consent shall be null and void. The Holder may not assign, transfer, participate or endorse its rights under this Note without the consent or approval of the Company, unless the Holder assigns, transfers, participates or endorses its rights hereunder (and, at the election of the Holder, under one

or more other Notes) with respect to an aggregate principal amount of Notes (including any accrued interest added to principal in accordance with the terms thereof) exceeding the lesser of (a) 33-1/3% of the aggregate outstanding principal amount of the Notes (including any accrued interest added to principal in accordance with the terms thereof) and (b) $10,000,000.

14. WAIVER OF JURY TRIAL AND CERTAIN DAMAGES. Each of the Company and the Holder waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Note, any rights or obligations hereunder, or the performance of any such rights or obligations. Except as prohibited by law, the Company waives any right that it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Company (a) certifies that neither the Holder, nor any representative, agent or attorney thereof has represented, expressly or otherwise, that the Holder would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that, in

entering into this Note, the Holder is relying upon, among other things, the foregoing waivers and certifications.

15. ENTIRE AGREEMENT; AMENDMENTS; INVALIDITY. This Note constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces in their entirety any prior discussions, agreements, etc., all of which are merged herein and therein. Except for the principal amount hereunder, the interest rate and principal and interest payments dates set forth herein and amendments which require the consent of the Holder, the terms of this Note may be amended or otherwise modified by an instrument executed by each of the Company and the holders of 51% of the outstanding principal amount of the Notes. If any term of this Note shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Note shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein.

16. CONSTRUCTION. References herein to Sections and Subsections shall mean such Sections and Subsections of this Note, except as otherwise specified. The word "including" as used herein shall not be construed so as to exclude any other thing not referred to or described.

17. THIRD PARTY BENEFICIARY; NOTICES. The Senior Holder is an intended third party beneficiary of Section 5 of this Note. The provisions of Section 5 are for the purpose of governing the relationship between the Holder and the Senior Holder and the Company shall have no rights under such Section. As between the Company and the Holder, the Company's obligations under this Note are absolute and unconditional, notwithstanding anything to the contrary in Section 5. The Company shall inform the Holder in writing of the name and contact information of all Senior Holders. The only Senior Holders having rights under Section 5 are those Senior Holders that have been so identified to the Holder. At the request of the Holder from time to time, the Company shall promptly deliver a list of all holders of Senior Debt together with all relevant contact information.

IN WITNESS WHEREOF, this Note has been duly executed as an instrument under

seal as of the date first set forth above.

ASPEN TECHNOLOGY, INC.

By:

Name:

Title:

Address:

TEN CANAL PARK

CAMBRIDGE, MASSACHUSETTS 02141

ACCEPTED AND AGREED:

[ ]

By:

Title:

Address:

Exhibit 99.8

ASPEN TECHNOLOGY, INC.

SCRIPT FOR CONFERENCE CALL ANNOUNCING PROJECT ALPINE

1. INTRO

a. Welcome to Aspen Technology's conference call in connection with this morning's press release announcing a proposed transaction to strengthen the company's balance sheet. I'm Joshua Young, director of Investor Relations and with me today is David McQuillin, Chief Executive Officer, and Lisa Zappala, Chief Financial Officer.

b. David and Lisa will begin shortly with some prepared remarks, during which they will refer to a short slide summary that is available on our website at WWW.ASPENTECH.COM by clicking on the investor relations tab and then selecting webcast hyperlink.

c. In order to comply with applicable securities law restrictions, we will be unable to engage in a question and answer session on this conference call. In order to assist investors, we have filed an 8-K with the detailed transaction documents for this financing. Over the next few weeks, we also plan to file a proxy statement for the shareholder meeting, which will have additional information, including a detailed Q&A document on the proposed transaction.

d. This call will be recorded and available for replay on our website or by dialing 719-457-0820 and entering confirmation code: 459086.

e. Before we begin, I would like to make the usual safe harbor statement that during the course of this conference call, we may make projections or other forward-looking statements regarding future events, or the financial performance of the Company, that involve risks and uncertainties. The Company's actual results may differ materially from the projections described in such statements. Factors that might cause such differences include, but are not limited to, those discussed in the Risk Factors section of Forms 10-K, 10-Q and 8-K, as filed with the Securities and Exchange Commission.

f. Also, please note that the following information is related to current business conditions and our outlook as of the time the information is provided. Consistent with our prior practice, we do not expect to update this information prior to release of our fourth quarter and full fiscal year results, in August.

g. During the course of this call today, we will reference non-GAAP information as part of our guidance. In compliance with the SEC's Regulation G, please refer to our 8-K filings that include both our rationale for why we believe not-GAAP information is important in describing our operating performance.

h. Now I'll turn the call over to David McQuillin.

2. WHAT WE ANNOUNCED

a. Thanks, Joshua. I am very pleased to announce today a significant milestone for AspenTech, as Advent International has agreed to make a substantial equity investment into the company to help us

strengthen our balance sheet. I'm going to spend the next few minutes describing the proposed transaction at a high level, as well as its strategic impact on our stakeholders and the motivations that led to this decision. Lisa will then address the expected impact on our financial position and prospects, the details of the transaction, and our estimated timing for key events during the proxy process. I'll finish by reviewing the reasons we believe this transaction paves the way forward for AspenTech and its constituents.

b. As you know, earlier today we announced that we've signed a definitive agreement to significantly strengthen AspenTech's balance sheet.

c. A graphic review of the proposed transaction can be found on the Slide titled "Sources/Uses". Under the agreement, AspenTech will issue a total of $121 million of a new series of convertible preferred stock, $21 million of which will be used as an exchange for Series B preferred shares. The company will receive $100 million from Advent International in new money;

d. On the right side, you can see that up to, but no more than $45.0 million of cash proceeds may be used to repurchase outstanding 5.25% Convertible Subordinated Debentures at prices that are attractive to the company.

e. Along with the exchange of $21 milllion Series D convertible preferred shares as partial payment, $30 million

of the cash proceeds from the financing will be used to eliminate the outstanding Series B preferred shares, which otherwise would have been entitled to receive $60 million over the next eight months.

f. The remaining cash proceeds, which we estimate will be a minimum of approximately $15 million, net of fees and expenses, will be used for working capital purposes.

g. In addition to seeking approval for the new preferred share issuance and related balance sheet restructuring, we will also be asking shareholders to approve the following:

   i. an expansion of the employee stock option pool, in order to ensure that our compensation plans remain competitive; and

   ii. a 1-for-3 reverse stock split to place the share price, post-transaction, at a level that will more accurately reflect our improved financial position.

3. STRATEGIC IMPACT

a. Many of you are aware that our financial performance and operational effectiveness have improved substantially over the past two fiscal quarters.

b. This progress has enabled management and the Board of Directors to turn our attention to the balance sheet, and to the underlying cash flow and liquidity issues that have hampered our recovery and will continue to do so until these issues are resolved.

c. Balancing financial and business risk is a critical task for every company, and this issue has been at the top of my priority list since I've taken the helm.

   i. Many aspects of the business risk we face, such as the

economy or the continuing FTC inquiry, are outside of our control.

ii. The same cannot be said for our financial risk. Before we could address the issues relating to our balance sheet, we first had to restore the company to operating profitability.

iii. As I mentioned earlier, we successfully accomplished that. Now, we are finally in a position to reduce the debt

level, eliminate the near-term overhang and uncertainty created from the highly restrictive Series B preferred stock, and add liquidity to our balance sheet.

d. Both the Board and I agree that this transaction is absolutely CRITICAL to ALL of our stakeholders. It will impact our ability to deliver valuable solutions to CUSTOMERS, it will provide stability and continuity to our SHAREHOLDERS and EMPLOYEES, and finally it will enable my team to restore AspenTech to attractive growth and profitability.

i. For CUSTOMERS, this transaction will eliminate concerns about the adequacy of our short-term cash position and long-term viability.

a. Over the past year, and especially in today's challenging environment, these balance sheet issues have created obstacles in the selling process for AspenTech. We believe this transaction is essential to restoring our top-line revenue performance.

b. With sufficient financial resources and relief from near-term repayment obligations, we believe we can return to working with customers on how we can help THEM with their OWN P&L's, and spend less time and energy discussing OUR balance sheet.

ii. For COMMON SHAREHOLDERS, while there will be some dilution with this deal, we believe this transaction will better position our shares to appreciate over time as the performance of our underlying business improves. This transaction will resolve several issues that have created a significant overhang in the stock and would be expected to continue to negatively affect the stock for the foreseeable future.

a. Specifically, we know that concerns around near-term liquidity have prevented many potential investors from buying our common stock. Our goal with this transaction is to address these concerns, including:

i. Our debt maturity burden will be substantially reduced,

ii. The Series B preferred stock will be retired, thereby eliminating uncertainty regarding near-term redemptions, which could have

led to significant issuances of common stock;

iii. Our cash position will be enhanced, which provides additional operating flexibility and

cushion in the event of a prolonged or negative outcome from the FTC investigation, and

iv. Our near-term cash flow may increase with the retirement of debt and the associated cash interest expense, especially given the fact that the Series D preferred stock does not have mandatory cash dividend payments.

b. Finally, our balance sheet after the transaction will enable potential investors to more easily analyze the value of our underlying equity, thereby eliminating another barrier to prospective purchasers of our common stock.

iii. For EMPLOYEES, the willingness of a respected private equity firm to make this substantial investment is important evidence that operational improvement is rewarded. The resulting financial stability, the planned restoration of normalized salaries, incentive bonuses, and other benefits previously curtailed over the past twelve months, will go a long way to boosting morale, as will the opportunity to participate in future appreciation in shareholder value.

iv. For all stakeholders, this transaction eliminates the potentially onerous conditions of previous financings, most notably, the Series B preferred, which has severely limited our alternatives to raising additional capital and has caused considerable confusion among our shareholders.

v. Another benefit of this transaction for all stakeholders will be improved near-term cash flow.

a. This will enable us to invest in growth and bring more profit to the bottom-line.

b. We will be in a better position to continue to meet our interest payments, and at maturity, the principal repayment, on our existing convertible subordinated debentures

c. And for those to whom AspenTech had outstanding obligations, this transaction enhances our ability to make those payments on a timely basis.

vi. Lastly, but not insignificantly, upon completion of this transaction, AspenTech management will be able to refocus our complete energies on the strategy and execution of the business, without the daily distractions of short-term liquidity concerns.

4. IDENTITY/MOTIVATION OF NEW INVESTOR

a. Advent International, a leading global private equity firm, is making a substantial capital commitment. They have agreed to invest $100 million to purchase new Series D convertible preferred shares.

b. We selected Advent after an extensive evaluation of alternatives.

i. They have an excellent track record and demonstrated expertise, with more than 80 investments in information technology and software.

ii. As a firm, they have familiarity with AspenTech, having made two private investments in our company, in 1986 and 1991.

iii. Another positive factor is their willingness to commit the time and focus of two of their senior executives, Doug Kingsley and Mike Pehl, who will be appointed to our Board of Directors once the transaction is approved.

c. Advent chose ASPENTECH, after extensive due diligence, because they share our vision and believe that together we can create attractive returns for shareholders.

i. The leadership at AspenTech appreciates the fact that this transaction represents a tremendous vote of confidence in our team, and in the value of our franchise.

ii. We realize that Advent's commitment would not have been possible without the substantial improvement in our financial performance evident over the last six months.

iii. Our entire organization undertook a series of difficult actions to restore the balance between revenues and spending, and the success is obvious from our reported results, as well as the willingness of an esteemed and independent investment firm to commit significant capital, both human and financial, to this endeavor.

d. Now I'd like to turn it over to Lisa to discuss the transaction from a financial point of view.

5. FINANCIAL STATEMENT IMPACT-BEFORE AND AFTER

a. Thanks, David. I'll spend the next few minutes reviewing the impact of the proposed transaction on our balance sheet, P&L, and cash flow.

b. The net impact of the transaction on the balance sheet, if we are successful in repurchasing convertible debt at attractive prices, is that we will reduce total debt by at least half, and total equity will increase by $62 million. The mechanics of this are as follows:

i. We hope to reduce the outstanding amount of our convertible debentures by up to $45.0 to $50 million (face value).

ii. Shareholders' Equity would increase by $87 million to reflect the Series D preferred; this entry will accrete to $121 million over seven years;

iii. The series B preferred entry would decrease by $57 million, which is the amount that has accrued thus far toward the $60 million total obligation.

c. Assuming we repurchase $45 million (face value) of our subordinated debentures, total debt as a percent of total capitalization, will decline from 46% to 23%.

i. This includes our obligations to Accenture and our capital leases.

ii. This is a dramatic improvement and well within the range of what is typical for companies in our sector.

iii. The Series D, since it is preferred stock, is not technically

a debt obligation. But since it is redeemable for cash in 2009 and 2010 if it has not yet converted, it has some debt-like characteristics and will sit as Mezzanine Equity on the balance sheet.

d. We have not previously provided any level of detailed guidance for Fiscal Year 2004. However, in order to estimate the impact of this transaction on our P&L, we are providing conservative guidance for the next twelve months. From a net income and cash flow standpoint, we anticipate a positive impact from this transaction. However, in terms of net income available to common holders, both in the aggregate and earnings per share, this financing will be dilutive.

e. First, in terms of guidance without the transaction, for fiscal year 2004, we are currently estimating total revenues of approximately $327 to $333 million.

   i. We anticipate a full year operating margin between 4% and 6%.

   ii. We believe will generate net income, before preferred dividend or accretion of approximately $9 to $11 million.

   iii. However, given the Series B preferred dividends and accretion below the net income line, net income available to common shareholders will be approximately $3-5 million, or $0.06-0.10 per common share, assuming 49 million fully diluted shares outstanding.

   iv. Pro Forma or Adjusted earnings per share, which excludes the Series B dividend and accretion, would be approximately $0.18-$0.22.

   v. The weighted average share count assumes we will use common stock to meet our Accenture obligation in July 2003, and to redeem the maximum portion possible of our Series B preferred shares.

f. Now, in terms of the impact of the transaction on the income statement:

   i. Interest income will increase, while interest expense will decline as we repurchase convertible debt.

   ii. This will result in net income, before preferred dividend or accretion, of approximately $11-13 million.

   iii. The shares underlying the new Series D preferred will increase weighted average shares outstanding.

   iv. Including Series D preferred dividends and accretion, we anticipate GAAP NET LOSS to common shareholders in the range of $2-4 million, or ($0.05)-(0.09) per common share.

   v. This assumes 43.5 million fully diluted shares outstanding.

   vi. PRO FORMA OR ADJUSTED EARNINGS PER SHARE, EXCLUDING SERIES D DIVIDEND AND ACCRETION, would be approximately $0.14-$0.17 per common share.

   vii. This represents dilution of approximately 23%, using adjusted earnings per share as the relevant metric.

   viii. We believe adjusted earnings per share is the best metric to measure for several reasons:

1. First, we believe it is the most meaningful indicator of the Company's operating performance.

2. Second, while the amount of the preferred dividend is known, our ability to estimate preferred accretion right now with accuracy is limited due to variables that may change in determining the value of the Series D warrants.

g. In terms of cash available relative to remaining obligations, we have previously said that we expect to end this fiscal year with cash and equivalents of approximately $49 million.

i. The proposed transaction would raise that balance to approximately $109 million.

ii. In addition, we anticipate we will generate an additional $30 to $50 million in cash over the next two years.

iii. Post this transaction, on a pro forma basis, we estimate that, as of June 30th, we'll have remaining commitments over the next two years totaling $97 million, including the following obligations:

1. We will pay Accenture approximately $3 million in cash by the end of July 2003.

2. We will have approximately $86 million face value of convertible debentures outstanding, prior to any repurchase, which will mature in June 2005.

3. And finally, we will have capital lease obligations of approximately $6-$8 million.

iv. Therefore, the near-term obligations would be more than covered by available cash on hand and that which we expect to generate.

6. PRINCIPAL TERMS OF SERIES D PREFERRED/RELATED MATTERS

a. Now, let me turn my attention to covering the details of Series D Preferred Stock.

i. The shares will accrue dividends at a rate of 8%, which we can pay in cash or in stock, at the timing of our choice. For example, we can accrue dividends all the way to redemption.

ii. The shares will be convertible at $3.33 per share, which represents a 12% discount to the average closing price for the last 15 trading days, and a 5% discount from the 30 trading day average.

iii. The shares are redeemable in cash or stock by AspenTech beginning in three years, if the stock trades above $7.60 per share for 45 consecutive days.

v. Series D holders can redeem half their shares for cash beginning in 2009, and the remaining half beginning in 2010, assuming they have not previously converted to common.

vi. Series D holders will also receive a total of 7.3 million warrants with a strike price of $3.33 per share.

vii. As is typical, the investors will have registration rights, anti-dilution protection, and other customary provisions.

viii. As part of the agreement, Advent International will have the right to nominate up to four of our nine directors, upon the closing of the transaction, proportionate to their equity interest.

b. In addition to seeking shareholder approval for the issuance of the Series D shares, we will also be asking holders to approve the expansion of the pool of options available for grant by approximately 5 million shares. These shares are intended to restore the competitiveness of our compensation programs, in connection with this transaction.

c. The last piece of the transaction is the 1 for 3 reverse share split we are also seeking approval to implement. The intention is to reset the shares outstanding and share price at levels consistent with others in the industry.

i. With this financing and our improved financial performance, a higher stock price seems a better reflection of our current condition.

ii. With the proposed split, roughly $270 thousand in net income to common will equal a penny per share, and we'll have 27 million shares outstanding on a fully-diluted basis at the current market price, giving effect to the transaction.

iii. Specific information regarding the mechanics of the stock split will be included in the proxy materials we will file with the S.E.C. shortly.

7. ANTICIPATED TIMING

a. Given the required shareholder approval, we currently anticipate that the entire transaction will take a few months to complete.

b. Obviously, many of the factors that drive this timetable are outside of our control.

c. Accordingly, what follows is our current best estimate, but it may change substantially.

i. We expect to file a preliminary proxy statement with the S.E.C. outlining the details of the transaction by mid-June.

ii. Assuming no S.E.C. review of the proxy filing, we would expect to mail the proxy materials in late June/early July.

iii. During July, we will also meet with shareholders, seeking votes in favor of our proposals. At that time, we will also schedule a webcast for other investors, where we will share the same presentation and take your questions.

iv. We currently expect to schedule the shareholder vote in August, once our audited results are available, and to close the transaction shortly thereafter. We will then be able to turn our undivided attention to operating the business!

v. Now I will turn it back to David to wrap up.

8. WHAT WE'RE NOT CHANGING

a. Thanks, Lisa. To sum things up, the proposed financing will transform our balance sheet and financial model. It is important to note that there are a number of aspects of our business that will NOT change.

b. First, our basic business unit approach will remain focused on two primary areas: engineering solutions and manufacturing/supply chain solutions.

c. Our commitment to customer satisfaction will remain a key priority.

d. Another factor that will not change is our drive for revenue growth and increased profitability. We will build value for shareholders as we grow the top and bottom lines.

e. AspenTech will retain and invest in its reputation for unparalled product excellence.

f. And we anticipate no significant changes to our strategy, and we have a great team of people responsible for implementing it.

9. THE WAY FORWARD

a. Now that we have established an acceptable operational model and demonstrated improved execution capability, this financing is not only the logical next step, it is essential. Before I close, I want to reiterate some of the key pieces of this transaction.

   i. The financing eliminates the uncertainties that have surrounded our balance sheet for more than twelve months.

   ii. It improves our near-term cash position,

   iii. It prevents the onerous conditions of previous financings from creating considerable dilution for shareholders.

   iv. It will bolster customer confidence in AspenTech, and finally

   v. It will enable the financial community to more easily analyze the underlying value of our equity for those investors considering purchasing of shares of our stock.

b. Even without robust economic growth, we believe this financing, will lay a foundation for the Company to:

   i. Continue to deliver best-in-class solutions that meaningfully improve customer profitability;

   ii. continue to invest in new and enhanced products, customer support, and market leadership,

   iii. reliably grow revenues,

   iv. generate positive cash flow from operations,

   v. and deliver attractive operating margins.

c. As the economy improves, we expect our top and bottom line performance will grow more rapidly, as will shareholder value.

d. Our target operating model contemplates operating margins in the mid-teens over the next two to three years, and we believe we can

steadily improve our financial performance to reach these levels.

10. CONCLUSION

a. We are proud of what we have been able to accomplish over the last two quarters, from an operational standpoint.

b. We are confident that this financing is the right thing for AspenTech at this time.

c. While we remain respectful of the challenges that lie ahead,

d. We are optimistic about the opportunities.

e. We look forward to speaking with many of you in the coming weeks, after we release our definitive proxy.

f. With that, we're going to sign off for today.

g. Thank you for your time and your attention.

Exhibit 99.9

ASPEN TECHNOLOGY, INC.

CONFERENCE CALL REGARDING

BALANCE SHEET STRENGTHENING

6/02/03

SAFE HARBOR STATEMENT

Some of the information and comments in this presentation may contain forward-looking statements that involve a number of risks and uncertainties. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements include the risks set forth under the caption "Risk Factors" in our 10K, 10Q and 8-K filed with the SEC.

SOURCES AND USES ($ MILLIONS)

Sources		Uses	
Series D Pfd. (new $ in)	$100.0	Conv. Sub Debs	$ 45.0*
		Series B Pfd. (Cash)	30.0
		Fees/Expenses (est.)	10.0
		Working Capital	15.0
Total Sources	$100.0	Total Uses	$100.0

- IN ADDITION, $21 MM OF SERIES D PREFERRED STOCK WILL BE EXCHANGED FOR $21 MM OF SERIES B PREFERRED STOCK. THE PREFERRED B STOCK WILL BE FULLY RETIRED.

* The company's projections for its use of capital represents an expected use of funds, but actual allocation may differ. The company expects to use up to, but no more than $45.5 million for the re-purchase of convertible bonds. The bonds will be re-purchased at prices that are attractive to the company.

IMPACT OF PROPOSED RESTRUCTURING

- Removes customer and investor obstacles
- Eliminates near-term liquidity risk, potentially onerous conditions
- Dilutes common shareholders in the short-term

- Paves way forward for appreciation in value
- Enables management to focus on strategy and execution

KEY TERMS: SERIES D PREFERRED SHARES

- Convert. at $3.33/share
- 8% dividend, accrued
- Payable in cash or stock at AZPN's option
- Company can elect to accrue dividends through redemption/conversion
- 7.3 million warrants at $3.33/share
- 50% redeemable by holders 2009 & 2010
- Redeemable by AZPN in 2006 if shares trade above $7.60 (45 days)
- Standard anti-dilution, reg. rights, etc.
- Advent appoints up to 4 of 9 directors (2 Advent Partners, 2 Independent)

ANTICIPATED TIMING

- File proxy	(mid June)
- Mail proxy	(late June/early July)
- Meetings w/investors, webcast	(July)
- Q4 results & shareholder vote	(August)
- Closing	

WHAT WE'RE NOT CHANGING!

- Drive for attractive growth, profitability
- Commitment to customers
- Solution focus, market leadership
- Product excellence, quality reputation
- Game plan, loyal employees, executive team

THE WAY FORWARD

- Eliminates balance sheet uncertainties
- Removes obstacles for customers, investors
- Prevents potentially onerous conditions
- Improves cash flow
- Reveals true underlying equity value
- Refocuses management energy on execution