



## Current Agreements

### Dealdoc

#### **Merger agreement for Schiff Nutrition International**

Reckitt Benckiser  
Schiff Nutrition International

Nov 21 2012

# Merger agreement for Schiff Nutrition International

<b>Companies:</b>	<a href="#">Reckitt Benckiser</a> <a href="#">Schiff Nutrition International</a>
<b>Announcement date:</b>	Nov 21 2012
<b>Deal value, US\$m:</b>	1400 : sum of shares purchase

- [Details](#)
- [Financials](#)
- [Termsheet](#)
- [Press Release](#)
- [Filing Data](#)
- [Contract](#)

## Details

<b>Announcement date:</b>	Nov 21 2012
<b>Start date:</b>	Nov 21 2012
<b>Industry sectors:</b>	Pharmaceutical Biotech Consumer health
<b>Therapy areas:</b>	Metabolic » Nutrition and vitamins

## Financials

<b>Deal value, US\$m:</b>	1400 : sum of shares purchase
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## Termsheet

Reckitt Benckiser Group has signed a definitive merger agreement with Schiff Nutrition International.

The Board of Directors of Schiff has approved the transaction and will recommend that its stockholders tender their shares into Reckitt Benckiser's previously announced cash tender offer of \$42.00 per share, valuing Schiff at \$1.4 billion.

## Press Release

SLOUGH, England, Nov. 21, 2012 /PRNewswire/ -- Reckitt Benckiser Group PLC ("Reckitt Benckiser") (LSE: RBL) today announces it has signed a definitive merger agreement with Schiff Nutrition International, Inc. ("Schiff") (NYSE:SHF) a leading provider of branded vitamins, nutrition supplements and nutrition bars in the United States and elsewhere. The Board of Directors of Schiff has approved the transaction and will recommend that its stockholders tender their shares into Reckitt Benckiser's previously announced cash tender offer of \$42.00 per share, valuing Schiff at \$1.4 billion. Reckitt Benckiser's tender offer will expire at 11:59 p.m. New York City time, on December 14, 2012, unless extended in accordance with the merger agreement and the applicable rules and regulations of the SEC. Reckitt Benckiser will finance the transaction with cash and existing credit facilities. The transaction is expected to be immediately accretive to earnings on an adjusted basis.

Rakesh Kapoor, Reckitt Benckiser Chief Executive Officer, said, "We are very pleased to have reached a mutually beneficial agreement with Schiff and are excited to enter the \$30 billion global vitamins, minerals and supplements market with such a strong portfolio of high quality branded business in the USA. Schiff's portfolio is an excellent fit with our strategic focus on health and hygiene, where in health care in the USA we already have Mucinex, Delsym, Cepacol and Durex as major brands."

"The sub-categories within which Schiff operates have strong growth momentum and to this we expect to combine Reckitt Benckiser's strong go to market capabilities as well as proven skills in branding, innovation and consumer communication and education."

"The integration process will be undertaken promptly following completion of the transaction, so that the business can continue its growth trajectory with minimum disruption and realize synergies as soon as possible. Reckitt Benckiser expects the tender offer to close before the end of calendar year 2012."

Kapoor concluded, "We are confident that our considerable expertise in building great consumer brands will drive sustainable growth and shareholder returns from this transaction."

The financial information disclosure dated October 29, 2012 and made public in Schiff's 14C SEC filing on November 5, 2012, indicated projected net sales of approximately \$385 million and forecast proforma EBITDA of approximately \$84.6 million for the fiscal year ending May 31, 2013.

Pursuant to the merger agreement, Reckitt Benckiser will amend its tender offer documents to, among other matters, remove the conditions relating to due diligence and the execution of a definitive merger agreement. The tender offer will remain subject to customary conditions, including the tender of a majority in voting power of Schiff shares of common stock and the expiration or early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act).

Morgan Stanley & Co. Limited is acting as exclusive financial adviser to Reckitt Benckiser and no one else in connection with the matters described in this announcement. In connection with such matters, Morgan Stanley & Co. Limited, its affiliates and their respective directors, officers, employees and agents will not regard any other person as their client, nor will they be responsible to any other person for providing the protections afforded to their clients or for providing advice in relation to the transaction, the contents of this announcement or any other matter referred to herein.

Paul, Weiss, Rifkind, Wharton & Garrison LLP is serving as Reckitt Benckiser's legal advisor.

#### About Reckitt Benckiser

Reckitt Benckiser (RB) is a global consumer goods leader in health, hygiene and home, listed on in the top 25 on the London Stock Exchange (LSE). With a purpose of delivering innovative solutions for healthier lives and happier homes, RB has more trebled revenues since it was formed in 2000 and its market cap has more than quadrupled. Today it is the global No 1 or No 2 in the majority of its fast-growing categories, driven by an exceptional rate of innovation. Its health, hygiene and home portfolio is led by 19 global Powerbrands including in the over the counter health category Mucinex, Durex, Nurofen, Strepsils Gaviscon and Scholl, and in the hygiene category Lysol, Dettol, Clearasil, Veet, Harpic, Bang, Mortein and Finish.

RB people and its culture are at the heart of the company's success. They have an intense drive for achievement and a desire to outperform wherever they focus, including in CSR where the company has reduced its carbon footprint by 20% in 5 years and is now targeting to deliver a 1/3 reduction in water use, 1/3 further reduction in carbon and have 1/3 of its net revenue coming from more sustainable products by 2020. It is also the Save the Children charity's largest FMCG global partner.

The company has operations in over 60 countries, with headquarters in the UK, Singapore, Dubai and Amsterdam, and sales in almost 200 countries. The Company employs approximately 38,000 people worldwide.

For more information visit [www.rb.com](http://www.rb.com)

#### About Schiff

Schiff's vitamin, minerals and supplements (VMS) product portfolio includes a number of market leading brands in the specialist product category in the USA, including MegaRed®, number 1 in the healthy heart segment, Move Free® the number 2 in joint care, Airborne® the number 2 in immune support, and Schiff Vitamins®.

## Filing Data

*Not available.*

## Contract

### AGREEMENT AND PLAN OF MERGER

among

Reckitt Benckiser LLC,

Ascot Acquisition Corp.,

Schiff Nutrition International, Inc.

and

Reckitt Benckiser Group plc

(solely for purposes of Section 6.17 hereof)

Dated as of November 21, 2012

## TABLE OF CONTENTS

Page

### ARTICLE 1

#### THE OFFER

3

1.1

##### The Offer

3

1.2

##### Company Actions

6

1.3

##### Directors

7

1.4

##### Top-Up Option

9

### ARTICLE 2

#### THE MERGER

10

2.1

##### The Merger

10

2.2

Closing and Effective Time of the Merger

11

## ARTICLE 3

### CONVERSION OF SECURITIES IN THE MERGER

12

3.1

#### Conversion of Securities

12

3.2

#### Payment for Securities; Surrender of Certificates

13

3.3

#### Dissenting Shares

15

3.4

#### Treatment of Company Options, Company RSUs and Restricted Shares; Stock Plans

16

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

17

4.1

#### Organization and Qualification; Subsidiaries

17

4.2

#### Capitalization

18

4.3

Authority

20

4.4

No Conflict

21

4.5

Required Filings and Consents

22

4.6

Permits; Compliance With Law

22

4.7

SEC Filings; Financial Statements

23

4.8

Internal Controls

24

4.9

State Takeover Laws

25

4.10

No Undisclosed Liabilities

25

4.11

Absence of Certain Changes or Events

25

4.12

Employee Benefit Plans

26

4.13

Labor and Other Employment Matters

28

4.14

Contracts

29

4.15

Litigation

31

4.16

Environmental Matters

31

4.17

Intellectual Property

32

4.18

Tax Matters

35

4.19

Insurance

36

4.20

Properties and Assets

36

4.21

Real Property

36

4.22

Opinion of Financial Advisor

37

4.23

Required Vote

37

4.24

Brokers

37

i

TABLE OF CONTENTS

(Continued)

Page

4.25

Related Party Transactions

37

4.26

Certain Regulatory Matters



38

4.27

Information Supplied

39

4.28

Bayer Merger Agreement

40

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

40

5.1

Organization and Qualification

40

5.2

Authority

40

5.3

No Conflict

41

5.4

Required Filings and Consents

41

5.5

Litigation

42

5.6

Ownership of Company Common Stock

42

5.7

Sufficient Funds

42

5.8

Ownership of Merger Sub; No Prior Activities

42

5.9

Management Arrangements

43

5.10

Brokers

43

5.11

Information Supplied

43

ARTICLE 6

COVENANTS

43

6.1

Conduct of Business by the Company Pending the Closing

43

6.2

Access to Information; Confidentiality

46

6.3

Non-Solicitation

47

6.4

Stockholder Written Consent; Preparing of Information Statement

49

6.5

Appropriate Action; Consents; Filings

50

6.6

Certain Notices

52

6.7

Public Announcements

52

6.8

Employee Benefit Matters

53

6.9

Indemnification of Directors and Officers

54

6.10

State Takeover Laws

56

6.11

Parent Agreement Concerning Merger Sub

56

6.12

Section 16 Matters

56

6.13

Stock Exchange Delisting; Deregistration

56

6.14

Stockholder Litigation

56

6.15

Domain Names

56

6.16

Short Form Merger

56

6.17

Guarantee of Guarantor

57

ARTICLE 7

CONDITIONS TO CONSUMMATION OF THE MERGER

57

7.1

Conditions to Obligations of Each Party Under This Agreement

TABLE OF CONTENTS

(Continued)

Page

ARTICLE 8

TERMINATION, AMENDMENT AND WAIVER

58

8.1

Termination

58

8.2

Effect of Termination

59

8.3

Amendment

60

8.4

Waiver

60

ARTICLE 9

GENERAL PROVISIONS

61

9.1

Non-Survival of Representations and Warranties

61

9.2

#### Fees and Expenses

61

9.3

#### Notices

61

9.4

#### Certain Definitions

62

9.5

#### Terms Defined Elsewhere

68

9.6

#### Headings

70

9.7

#### Severability

70

9.8

#### Entire Agreement

71

9.9

#### No Third Party Beneficiaries

71

9.10

Assignment

71

9.11

Mutual Drafting; Interpretation

71

9.12

Governing Law; Consent to Jurisdiction; Waiver of Trial by Jury

72

9.13

Counterparts

73

9.14

Specific Performance

73

Exhibit A

Form of Certificate of Incorporation of the Surviving Corporation

Exhibit B

Form of Bylaws of the Surviving Corporation

Exhibit C

Form of Stockholder Written Consent

Exhibit D

Certain Holders of Shares

Conditions to the Offer

iii

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of November 21, 2012 (this "Agreement"), is entered into by and among Reckitt Benckiser LLC, a Delaware limited liability company ("Parent"), Ascot Acquisition Corp., a Delaware corporation and a wholly-owned Subsidiary of Parent ("Merger Sub"), and Schiff Nutrition International, Inc., a Delaware corporation (the "Company") and, solely for the purposes of Section 6.17 hereof, Reckitt Benckiser Group plc, a public limited company organized under the laws of England and Wales ("Guarantor"). All capitalized terms used in this Agreement will have the meanings assigned to such terms in Section 9.4 or as otherwise defined elsewhere in this Agreement.

RECITALS

WHEREAS, on November 16, 2012, Merger Sub commenced a cash tender offer (as it may be amended or supplemented from time to time as permitted under this Agreement, the "Offer") to acquire all of the issued and outstanding shares of Class A common stock, par value \$0.01 per share (the "Class A Common Stock"), and Class B common stock, par value \$0.01 per share (the "Class B Common Stock"), of the Company (the Class A Common Stock and the Class B Common Stock, together, the "Company Common Stock") (which shares of Company Common Stock are hereinafter referred to as the "Shares"), for \$42.00 per share of Company Common Stock (such amount, or any higher amount per share paid pursuant to the Offer, being the "Offer Price"), net to holder in cash, without interest;

WHEREAS, following the consummation of the Offer, upon the terms and conditions set forth in this Agreement, the parties hereto intend that Merger Sub will be merged with and into the Company, with the Company continuing as the Surviving Corporation (the "Merger"), in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), whereby each issued and outstanding Share (other than Shares to be cancelled in accordance with Section 3.1(b) and other than Dissenting Shares) will be converted into the right to receive the Offer Price;

WHEREAS, the Company has terminated the Agreement and Plan of Merger dated as of October 29, 2012, by and among Bayer HealthCare, LLC ("Bayer"), Willow Road Company and the Company (the "Bayer Merger Agreement") in accordance with its terms;

WHEREAS, in connection with the termination of the Bayer Merger Agreement and entry into this Agreement, the Company has paid to Bayer the Breakup Fee (as defined in the Bayer Merger Agreement) of \$22,000,000 pursuant to Section 7.2(b) of the Bayer Merger Agreement;

WHEREAS, in furtherance of the Offer and the Merger, Parent, Merger Sub and the Company shall cooperate to amend the Offer Documents (as defined below) to reflect the terms of this Agreement;

WHEREAS, the Board of Directors of the Company (the "Company Board") has, upon the terms and subject to the conditions set forth herein, (i) determined that the Offer, the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement, the Offer, the Merger and the other transactions contemplated hereby in accordance with the requirements of the DGCL, (iii) recommended that the Company's stockholders vote their Shares in favor of adopting this Agreement by written consent in lieu of a meeting and (iv) resolved to recommend that the Company's stockholders accept the Offer and tender their Shares pursuant to the Offer (the "Company Board Recommendation");

WHEREAS, the Boards of Directors of Parent and Merger Sub have, upon the terms and subject to the conditions set forth herein, (i) determined that the Offer, the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of Parent and Merger Sub and their respective stockholders and (ii) approved and declared advisable this Agreement, the Offer, the Merger and the other transactions contemplated hereby;

WHEREAS, as a condition to and inducement to Parent's and Merger Sub's willingness to enter into this Agreement, simultaneously with the execution of this Agreement and with the approval of the Company, certain stockholders of the Company are entering into tender and support agreements with Parent and Merger Sub (the "Tender and Support Agreements");

WHEREAS, as a condition to and inducement to Parent's and Merger Sub's willingness to enter into this Agreement, simultaneously with the execution of this Agreement, certain directors and officers of the Company are entering into agreements (each, a "D&O Agreement") with Parent and Merger Sub pursuant to which such directors and officers have agreed to (i) subject to the terms of Section 3.4, tender in the Offer, or any Subsequent Offering Period, as applicable, all Shares held by them (including (a) Restricted Shares, (b) Shares issuable upon vesting of



Company RSUs and (c) Shares issuable upon the permitted exercise of Company Options prior to any Expiration Date or the expiration of any Subsequent Offering Period, as applicable, in each case, on the terms and subject to the conditions set forth in such D&O Agreements) and (ii) with respect to each Company Option held by them following the Offer Acceptance Time, refrain from exercising such Company Option prior to its cancellation in the Merger (except as otherwise permitted under such D&O Agreements); and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Offer and the Merger and also to prescribe various conditions to the Offer and the Merger.

2

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

### ARTICLE 1

#### THE OFFER

##### 1.1 The Offer.

(a) On the date of commencement of the Offer (within the meaning of Rule 14d-2 under the Exchange Act), Guarantor, Parent and Merger Sub filed with the SEC a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments and supplements thereto and including exhibits thereto, the "Schedule TO") that incorporated by reference the Offer to Purchase and form of the related letter of transmittal, form of summary advertisement and such other customary documents included therein (the Schedule TO, the Offer to Purchase and such other documents pursuant to which the Offer is being made, the "Offer Documents").

(b) Subject to the conditions of this Agreement, as promptly as practicable but in no event later than three Business Days after the date hereof, Merger Sub shall, and Parent shall cause Merger Sub to, amend the offer to purchase (as so amended and supplemented, the "Offer to Purchase") and the other Offer Documents, in each case in accordance with the terms of this Agreement, (as so amended and supplemented, the "Amended Offer Documents"), including to reflect the conditions set forth in Annex I (the "Offer Conditions") and file with the SEC the Amended Offer Documents.

(c) Merger Sub expressly reserves the right to (i) increase the Offer Price, (ii) waive any Offer Condition (provided, that Merger Sub will not waive the Minimum Condition without the prior written consent of the Company) and (iii) make any other changes in the terms and conditions of the Offer not inconsistent with the terms of this Agreement, in each case subject to extending the Offer as required by applicable Law; provided, however, that unless otherwise provided by this Agreement, without the prior written consent of the Company, Merger Sub shall not (A) decrease the Offer Price, (B) change the form of consideration payable in the Offer, (C) decrease the maximum number of Shares sought to be purchased in the Offer, (D) add to, or impose conditions to the Offer, other than the Offer Conditions, (E) amend or modify any of the Offer Conditions or any of the terms of the Offer in a manner adverse to the holders of Shares or that would, individually or in the aggregate, reasonably be expected to prevent, materially delay or impair the ability of Parent or Merger Sub to consummate the Offer, the Merger or the other transactions contemplated hereby, (F) waive or change the Minimum Condition (provided, that Merger Sub may, at its sole discretion prior to the expiration of the Offer, waive or change the Minimum Condition to remove the proviso in the definition of such term requiring that the calculation of the total outstanding voting power of the Shares be made on a fully-diluted basis; provided further, that Merger Sub (i) provides written notification of such determination to the Company and (ii) provides any notification or modification to the Amended Offer Documents with respect thereto, to the extent required by applicable Law, in each case at least five Business Days prior to

3

any scheduled Expiration Date) or (G) extend or otherwise change the Expiration Date in a manner other than as required or permitted by this Agreement. The Offer may not be withdrawn prior to the Expiration Date (or any Expiration Date, as extended pursuant to the terms of this Agreement), unless this Agreement is terminated in accordance with Article 8. Notwithstanding anything to the contrary in this Agreement, the Offer Price shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Shares), cash dividend, reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to the Shares, occurring on or after the date of this Agreement and prior to the Offer Acceptance Time, and such adjustment to the Offer Price shall provide to the holders of Shares the same economic effect as contemplated by this Agreement prior to such action; provided, that nothing in this sentence shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(d) Unless extended pursuant to and in accordance with the terms of this Agreement, the Offer shall initially be scheduled to expire at 11:59 p.m. (New York City time) on the date that is the later of (i) December 14, 2012 or (ii) the date that is five (5) Business Days following the date of filing with the SEC of the Amended Offer Documents (for this purpose calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) (the "Initial Expiration Date") or, in the event the Initial Expiration Date has been extended pursuant to and in accordance with this Agreement, the date and time to which the Offer has been so extended (the Initial Expiration Date, or such later date and time to which the Initial Expiration Date has been extended pursuant to and in accordance with this Agreement, is referred to as the "Expiration Date").

(e) The Offer shall be extended from time to time as follows:

(i) If on the scheduled Expiration Date, the Minimum Condition has not been satisfied or any of the other Offer Conditions have not been satisfied (other than conditions that by their nature are to be satisfied at any time prior the Offer Acceptance Time), or waived by Parent or Merger Sub if permitted hereunder, then prior to the then scheduled Expiration Date Merger Sub shall extend the Offer for one or more periods of not more than five (5) Business Days each (or such other number of Business Days as the parties may agree) and ending no later than the Outside Date in order to permit the satisfaction of such conditions (subject to the right of Merger Sub to waive any Offer Condition, other than the Minimum Condition (except as provided in Section 1.1(c)), in accordance with this Agreement); provided, that nothing in this Section 1.1(e)(i) shall be deemed to impair, limit or otherwise restrict in any manner the right of Parent or the Company to terminate this Agreement pursuant to Article 8 hereof; and

(ii) Merger Sub shall, and Parent shall cause Merger Sub to, extend the Offer for any period or periods required by applicable Law, interpretation or position of the SEC or its staff or the New York Stock Exchange LLC (the "NYSE") or its staff, in each case applicable to the Offer, provided that Merger Sub shall not be required to extend the Offer beyond the Outside Date.

4

(f) Merger Sub may (and the Amended Offer Documents shall reserve the right of Merger Sub to) provide for a subsequent offering period (within the meaning of Rule 14d-11 promulgated under the Exchange Act) in compliance with Rule 14d-11 promulgated under the Exchange Act (a "Subsequent Offering Period") of not fewer than three (3) Business Days nor more than twenty (20) Business Days (for this purpose calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) immediately following the expiration of the Offer; provided, that Merger Sub shall offer a Subsequent Offering Period of three (3) Business Days at the request of the Company if, immediately following the expiration of the Offer, the Short Form Threshold has not been reached and cannot be reached through the immediate exercise of the Top-Up Option hereunder in accordance with its terms. Subject to the terms and conditions set forth in this Agreement and the Offer, Parent shall cause Merger Sub to, and Merger Sub shall, accept for payment and pay for all Shares validly tendered during such Subsequent Offering Period as promptly as practicable after any such Shares are tendered and in any event in compliance with Rule 14e-1(c) under the Exchange Act. Parent shall provide or cause to be provided to Merger Sub on a timely basis the funds necessary to purchase and pay for any and all Shares that Merger Sub becomes obligated to accept for payment and purchase pursuant to the Offer and shall cause Merger Sub to fulfill all of Merger Sub's covenants, agreements and obligations in respect of the Offer and this Agreement, in each case to the extent such covenants and payment obligations are to be performed or made at or prior to Closing. Parent and Merger Sub shall, and each of Parent and Merger Sub shall ensure that all of their respective Affiliates shall, tender any Shares held by them into the Offer.

(g) Merger Sub shall not terminate the Offer prior to any scheduled Expiration Date without the prior written consent of the Company, except if this Agreement is terminated pursuant to Article 8. In the event that this Agreement is terminated pursuant to the terms hereof, Merger Sub shall, and Parent shall cause Merger Sub to, (i) promptly (and in any event within twenty-four (24) hours of such termination), irrevocably and unconditionally terminate the Offer, (ii) not acquire any Shares pursuant to the Offer and (iii) cause any depository acting on behalf of Merger Sub to promptly return, in accordance with applicable Law, all tendered Shares to the registered holders thereof.

(h) The Company shall cooperate fully in the preparation of the Amended Offer Documents to reflect the terms of this Agreement and the Company and its counsel shall be given a reasonable opportunity to review the Amended Offer Documents before they are filed with the SEC. Parent and Merger Sub agree that they shall cause the Amended Offer Documents and all exhibits, amendments or supplements thereto filed by either Parent or Merger Sub with the SEC to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other applicable Laws. Without limiting the generality of the foregoing, the Company will furnish to the Parent and Merger Sub the information relating to it required by the Exchange Act to be set forth in the Amended Offer Documents, including in connection with communicating the Offer to the record and beneficial holders of the Shares. Each of Parent and Merger Sub shall use its reasonable best efforts to resolve all SEC comments with respect to the Amended Offer Documents as promptly as reasonably practicable

5

after receipt thereof. Each of Parent, Merger Sub and the Company agrees to correct any information provided by it for use in the Amended Offer Documents which shall have become false or misleading. Each of Parent and Merger Sub shall as soon as reasonably practicable notify the Company of the receipt of any comments from the SEC with respect to the Amended Offer Documents and any request by the SEC for any amendment to the Amended Offer Documents or for additional information and shall provide the Company with copies of all such comments and correspondence. Prior to filing or mailing the Amended Offer Documents (or any amendment or supplement thereto) or responding to any

comments of the SEC (or the staff of the SEC) with respect thereto, each of Parent and Merger Sub shall provide the Company a reasonable opportunity to review and to propose comments on such document or response and shall, in good faith, consider and incorporate the reasonable comments of the Company.

## 1.2 Company Actions.

(a) No later than three (3) Business Days following the date of this Agreement, the Company shall file with the SEC, and shall promptly thereafter disseminate to holders of Shares, as and to the extent required by applicable federal securities Laws, a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits, amendments or supplements thereto, the "Schedule 14D-9") that shall reflect the Company Board Recommendation. The Company agrees that it will cause the Schedule 14D-9 to comply in all material respects with the Exchange Act and other applicable Laws. Without limiting the generality of the foregoing, each of Parent and Merger Sub will furnish to the Company the information relating to it required by the Exchange Act to be set forth in the Schedule 14D-9. The Company shall use its reasonable best efforts to resolve all SEC comments with respect to the Schedule 14D-9 as promptly as reasonably practicable after receipt thereof. Each of Parent, Merger Sub and the Company agrees to correct any information provided by it for use in the Schedule 14D-9 which shall have become false or misleading. The Company shall as soon as reasonably practicable notify Parent and Merger Sub of the receipt of any comments from the SEC with respect to the Schedule 14D-9 and any request by the SEC for any amendment to the Schedule 14D-9 or for additional information and shall provide Parent with copies of all such comments and correspondence. Prior to filing or mailing the Schedule 14D-9 (or any amendment or supplement thereto) or responding to any comments of the SEC (or the staff of the SEC) with respect thereto, the Company shall provide Parent a reasonable opportunity to review and to propose comments on such document or response and shall, in good faith, consider and incorporate the reasonable comments of Parent.

(b) In connection with the Offer, the Company shall cause its transfer agent to promptly furnish Parent with a list of the Company's record stockholders, mailing labels and any available listing or computer file containing the names and addresses of all record holders of Shares, any non-objecting beneficial owner lists and any available listings of securities positions of record holders of Shares held in stock depositories, in each case, to the Company's knowledge, true and correct as of the most recent practicable date, and shall provide to Parent such additional information (including updated lists of stockholders, mailing labels and lists of securities positions) and such

6

other assistance as Parent may reasonably request in connection with communicating the Offer to the record and beneficial holders of Shares. Parent and Merger Sub and their agents shall hold in confidence the information contained in any such labels, listings and files, shall use such information only in connection with the Offer and the Merger and, if this Agreement shall be terminated, shall, upon request, deliver, and shall use their reasonable efforts to cause their agents to deliver, to the Company (or destroy) all copies and any extracts or summaries from such information then in their possession or control or under the control of any of their representatives or agents in accordance with the terms of the Confidentiality Agreement.

## 1.3 Directors.

(a) Promptly upon the Offer Acceptance Time and all times thereafter, subject to compliance with applicable Laws and the applicable rules and regulations of the NYSE Listed Company Manual, Merger Sub shall be entitled to designate such number of directors, rounded up to the next whole number, on the Company Board as is equal to the product of (i) the total number of directors on the Company Board (after giving effect to the directors designated by Merger Sub pursuant to this sentence) multiplied by (ii) the percentage that the aggregate voting power of Shares at such time beneficially owned by Parent, Merger Sub and any of their Affiliates bears to the total voting power of Shares then issued and outstanding. As used in this Agreement, the terms "beneficial ownership" (and its correlative terms) shall have the meaning assigned to such term in Rule 13d-3 under the Exchange Act. The Company shall, upon Merger Sub's request at any time following the Offer Acceptance Time, take all such actions necessary to (A) appoint to the Company Board the individuals designated by Merger Sub and permitted to be so designated by the first sentence of this Section 1.3(a), including, but not limited to, promptly filling vacancies or newly created directorships on the Company Board, promptly increasing the size of the Company Board (including by amending the bylaws of the Company if necessary so as to increase the size of the Company Board) and/or promptly securing the resignations of such number of its incumbent directors as are necessary or desirable to enable Merger Sub's designees to be so elected or designated to the Company Board, and (B) cause Merger Sub's designees to be so appointed at such time. The Company shall, upon Merger Sub's request following the Offer Acceptance Time, also cause Persons elected or designated by Merger Sub to constitute the same percentage (rounded up to the next whole number) as is on the Company Board of each committee of the Company Board to the extent permitted by applicable Laws and the NYSE Listed Company Manual. The Company's obligations under this Section 1.3(a) shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. The Company shall take all actions required pursuant to Section 14(f) of the Exchange Act and Rule 14f-1 in order to fulfill its obligations under this Section 1.3(a), including mailing to stockholders the information required by Section 14(f) of the Exchange Act and Rule 14f-1 not later than such time as is necessary to enable Merger Sub's designees to be designated to the Company Board at the Offer Acceptance Time. Merger Sub shall and Parent shall cause Merger Sub to supply the Company with, and be solely responsible for, information with respect to Merger Sub's designees and Parent's and Merger Sub's respective officers, directors and affiliates to the extent required by Section 14(f) of the Exchange Act and Rule 14f-1. The provisions

of this Section 1.3(a) are in addition to and shall not limit any rights that any of Merger Sub, Parent or any of their respective Affiliates may have as a record holder or beneficial owner of Shares as a matter of applicable Laws with respect to the election of directors or otherwise.

(b) In the event that Merger Sub's designees are designated to the Company Board pursuant to Section 1.3(a), then, until the Effective Time, the Company shall cause the Company Board to maintain three (3) directors who are members of the Company Board on the date hereof and who are not officers, directors or employees of Parent, Merger Sub, or any of their Affiliates, each of whom shall be an "independent director" under Section 303A.00 of the NYSE Listed Company Manual and eligible to serve on the Company's audit committee under the Exchange Act and NYSE Listed Company Manual (the "Continuing Directors"), and at least one of whom shall be an "audit committee financial expert" as defined in Items 407(d)(5)(ii) and (iii) of Regulation S-K; provided, however, that if the number of Continuing Directors is reduced below three for any reason, the Company shall take all necessary action (including creating a committee of the Company Board) so that the remaining Continuing Director(s) shall be entitled to elect or designate another Person (or Persons) to fill such vacancy, and such Person (or Persons) shall be deemed to be a Continuing Director for purposes of this Agreement. If no Continuing Director then remains, the other directors on the Company Board shall designate three Persons who are not officers, directors or employees of Parent, Merger Sub, or any of their affiliates, each of whom shall be an "independent director" under Section 303A.00 of the NYSE Listed Company Manual and eligible to serve on the Company's audit committee under the Exchange Act and NYSE Listed Company Manual, and at least one of whom shall be an "audit committee financial expert" as defined in Items 407(d)(5)(ii) and (iii) of Regulation S-K, to fill such vacancies and such Persons shall be deemed Continuing Directors for all purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, if Merger Sub's designees constitute a majority of the Company Board after the Offer Acceptance Time and prior to the Effective Time, then the affirmative vote of a majority of the Continuing Directors (or in the case where there are two or fewer Continuing Directors, the concurrence of all Continuing Directors) shall (in addition to the approval rights of the Company Board or the stockholders of the Company as may be required by the Company Organizational Documents or applicable Laws) be required (i) for the Company to amend, modify or terminate this Agreement, (ii) for the Company to extend the time for the performance of any of the obligations or other acts of Parent or Merger Sub hereunder, (iii) to exercise or waive any of the Company's material rights, benefits or remedies hereunder, (iv) for any amendment to the Company Organizational Documents that adversely affects or would reasonably be expected to adversely affect the stockholders of the Company (other than Parent, Merger Sub or any of their Affiliates), or (v) to take any other action of the Company Board under or in connection with this Agreement if such action would adversely affect (in a non-de minimis manner), or would reasonably be expected to adversely affect (in a non-de minimis manner), the holders of Shares (other than Parent, Merger Sub or any of their Affiliates); provided, however, such affirmative vote of a majority of the Continuing Directors shall in no event be required for the consummation of the Top-Up Option or the Merger in accordance with this Agreement. The Continuing Directors shall have, and Parent shall cause the Continuing

Directors to have, the authority to retain such counsel (which may include current counsel to the Company or the Company Board) in reasonable circumstances and other advisors at the expense of the Company as determined by the Continuing Directors, and the authority to institute any action on behalf of the Company to enforce performance of this Agreement or any of the Company's rights hereunder, in each case until the Closing. Following the Offer Acceptance Time and prior to the Effective Time, unless required by applicable Law or applicable fiduciary duties or for removal for good cause, neither Parent nor Merger Sub shall take any action to remove any Continuing Director.

#### 1.4 Top-Up Option.

(a) The Company hereby grants to Parent and Merger Sub an option (the "Top-Up Option") to purchase from the Company the number of Shares (such shares, the "Top-Up Option Shares") equal to the lesser of (i) the number of Shares that, when added to the number of Shares owned by Parent and its Subsidiaries at the time of exercise of the Top-Up Option, constitutes one share more than 90% of the number of Shares that would be outstanding in each class of Company Common Stock immediately after the issuance of all Shares subject to the Top-Up Option on a fully diluted basis or (ii) the aggregate number of Shares that the Company is authorized to issue under its articles of incorporation, but that are not issued and outstanding (and are not subscribed for or otherwise committed to be issued) at the time of exercise of the Top-Up Option, at a price per share of Company Common Stock equal to the Offer Price. The Top-Up Option shall terminate upon the earlier to occur of (A) the Effective Time and (B) the termination of this Agreement in accordance with its terms.

(b) The Top-Up Option may be exercised by Parent or Merger Sub once in whole and not in part on or prior to the fifth Business Day after the later of the Offer Acceptance Time and the expiration of any Subsequent Offering Period pursuant to Section 1.1(f), if applicable, if at such time, Parent, Merger Sub or any Subsidiary of Parent or Merger Sub do not own in the aggregate at least 90% of the total then-outstanding shares of each class of Company Common Stock (determined on a fully diluted basis); provided, however, that the obligation of the Company to deliver the Top-Up Option Shares is subject to the conditions that (i) no Order of any Governmental Entity shall restrain, enjoin or otherwise prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Option Shares in respect of such exercise; and (ii) Merger Sub has accepted for payment and paid for all Shares validly tendered in the Offer and not withdrawn.

(c) The aggregate purchase price payable for the Top-Up Option Shares shall be determined by multiplying the number of Top-Up Option Shares by the Offer Price. Such purchase price may be paid by Parent or Merger Sub, at its election, either (i) entirely in cash, (ii) by payment in cash of no less than \$0.01 per share and payment of the balance by executing and delivering to the Company a promissory note (with full

recourse to Parent) having a principal amount equal to the difference between the purchase price and the aggregate par value of the Top-Up Option Shares or (iii) any combination thereof. Any such promissory note shall bear interest at the applicable federal rate as determined for U.S. income tax purposes, shall mature on the first anniversary of the date of execution and delivery of such promissory note and may be prepaid at any time without premium or penalty.

9

(d) If they elect to exercise the Top-Up Option, Parent or Merger Sub shall deliver to the Company a written notice setting forth (i) the number of Shares that will be owned by Parent and Merger Sub immediately preceding the purchase of the Top-Up Option Shares together with the number of Top-Up Option Shares, (ii) the manner in which Parent or Merger Sub intends to pay the applicable exercise price and (iii) the place and time at which the closing of the purchase of the Top-Up Option Shares is to take place, which shall take place not later than five (5) Business Days following the Offer Acceptance Time or the expiration of any Subsequent Offering Period pursuant to Section 1.1(f). The Company shall, as soon as practicable following receipt of such notice (and in no event later than the Top-Up Option closing date), notify Parent and Merger Sub in writing of the number of Shares then outstanding and the number of Top-Up Option Shares. At the closing of the purchase of the Top-Up Option Shares, Parent or Merger Sub shall cause to be delivered to the Company the consideration required to be delivered in exchange for the issuance of the Top-Up Option Shares, and the Company shall cause to be issued and delivered to Parent or Merger Sub (as the case may be) a certificate or certificates representing the Top-Up Option Shares or, at Parent's or Merger Sub's request or otherwise if the Company does not then have certificated Shares, the applicable number of non-certificated Shares represented by book-entry ("Book-Entry Shares"). Such certificates or Book-Entry Shares may include any legends required by applicable Laws. Without the prior written consent of the Company, the right to exercise the Top-Up Option granted pursuant to this Agreement shall not be assigned by Parent or Merger Sub except in connection with an assignment in compliance with Section 9.10. Any attempted assignment in violation of this Section 1.4(d) shall be null and void.

(e) Parent and Merger Sub acknowledge that the Top-Up Option Shares that Merger Sub may acquire upon exercise of the Top-Up Option will not be registered under the Securities Act and will be issued in reliance upon an exemption thereunder for transactions not involving a public offering. Parent and Merger Sub represent and warrant to the Company that Merger Sub is, and will be upon the purchase of the Top-Up Option Shares, an "Accredited Investor," as defined in Rule 501 of Regulation D under the Securities Act. Merger Sub agrees that the Top-Up Option and the Top-Up Option Shares to be acquired upon exercise of the Top-Up Option, if any, are being and will be acquired by Merger Sub for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof in violation of the Securities Act.

## ARTICLE 2

### THE MERGER

#### 2.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, Merger Sub will be merged with and into the Company. As a result of the Merger, the separate corporate

10

existence of Merger Sub will cease, and the Company will continue as the surviving corporation of the Merger (the "Surviving Corporation"). The Merger will have the effects set forth in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, all of the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub will vest in the Surviving Corporation, and all of the debts, liabilities and duties of the Company and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

(b) At the Effective Time, the certificate of incorporation of the Surviving Corporation will, by virtue of the Merger, be amended so as to read in its entirety in the form set forth as Exhibit A hereto, until thereafter changed or amended as provided therein or by applicable Law. In addition, the Company and the Surviving Corporation will take all necessary action such that, at the Effective Time, the bylaws of the Surviving Corporation will be amended so as to read in its entirety in the form set forth as Exhibit B hereto, until thereafter changed or amended as provided therein or by applicable Law.

(c) The directors of Merger Sub immediately prior to the Effective Time will, from and after the Effective Time, be the initial directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation. The officers of the Company immediately prior to the Effective Time, from and after the Effective Time, will continue as the officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

(d) If at any time after the Effective Time, the Surviving Corporation determines, in its sole discretion, or is advised, that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or Merger Sub acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or Merger Sub, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

2.2 Closing and Effective Time of the Merger. The closing of the Merger (the "Closing") will take place at 10:00 a.m., Eastern time, on a date to be specified by the

11

parties (the "Closing Date"), as promptly as practicable after the satisfaction or waiver of all of the conditions set forth in Article 7 but in any event no later than the second Business Day thereafter (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions at the Closing), at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York, unless another time, date or place is agreed to in writing by the parties hereto. On the Closing Date, or on such other date as Parent and the Company may agree to in writing, Parent, Merger Sub and the Company will cause a certificate of merger (the "Certificate of Merger"), to be executed and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and will make all other filings or recordings required under the DGCL. The Merger will become effective at the time the Certificate of Merger will have been duly filed with the Secretary of State of the State of Delaware or such other date and time as is agreed upon by the parties and specified in the Certificate of Merger, such date and time hereinafter referred to as the "Effective Time."

### ARTICLE 3

#### CONVERSION OF SECURITIES IN THE MERGER

3.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities:

(a) Conversion of Company Common Stock. Each Share issued and outstanding immediately prior to the Effective Time, other than Shares to be cancelled in accordance with Section 3.1(b) and other than Dissenting Shares, will be converted into the right to receive the Offer Price, payable to the holder in cash, without interest (the "Merger Consideration"), upon surrender of the certificate formerly representing such Shares in accordance with Section 3.2. At the Effective Time, all of the Shares shall cease to be outstanding, shall be cancelled and shall cease to exist, and each Certificate that immediately prior to the Effective Time represented any of the Shares (other than Shares to be cancelled in accordance with Section 3.1(b) and other than Dissenting Shares) shall thereafter represent only the right to receive the Merger Consideration, without interest.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. All Shares that are held in the treasury of the Company or owned of record by any Company Subsidiary, and all Shares owned of record by Parent, Merger Sub or any of their respective wholly-owned Subsidiaries, will be cancelled and will cease to exist, with no payment being made with respect thereto.

(c) Merger Sub Common Stock. Each share of common stock, par value \$0.01 per share, of Merger Sub (the "Merger Sub Common Stock") issued and outstanding immediately prior to the Effective Time will be converted into and become one newly and validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation, and such shares shall constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the

12

Effective Time, all certificates representing Merger Sub Common Stock shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the preceding sentence.

3.2 Payment for Securities; Surrender of Certificates.

(a) Paying Agent. At or prior to the Effective Time, Parent will designate a reputable bank or trust company, mutually agreeable to both Parent and the Company, to act as the paying agent for purposes of effecting the payment of the Merger Consideration in connection with the Merger (the "Paying Agent"). At or promptly after the Effective Time, Parent or Merger Sub will deposit, or cause to be deposited, with the Paying Agent the aggregate Merger Consideration to which holders of Shares will be entitled at the Effective Time pursuant to this Agreement, together with the aggregate Option Payments and RSU Payments (except to the extent that Parent determines to make any such Option Payments or RSU

Payments to employees through the payroll of the Surviving Corporation). Such funds will be invested by the Paying Agent as directed by Parent, in its sole discretion, pending payment thereof by the Paying Agent to the holders of the Shares. Earnings from such investments will be the sole and exclusive property of Parent, and no part of such earnings will accrue to the benefit of holders of Shares.

(b) Procedures for Surrender. As promptly as practicable after the Effective Time, Parent will cause the Paying Agent to mail to each holder of record of a certificate or certificates that represented Shares (the "Certificates") or Book-Entry Shares, in each case, which Shares were converted into the right to receive the Merger Consideration at the Effective Time pursuant to this Agreement: (i) a letter of transmittal, which will specify that delivery will be effected, and risk of loss and title to the Certificates will pass, only upon delivery of the Certificates to the Paying Agent, and will otherwise be in such form and have such other provisions as Parent or the Paying Agent may reasonably specify and (ii) instructions for effecting the surrender of the Certificates or Book-Entry Shares in exchange for payment of the Merger Consideration. Upon surrender of Certificates and Book-Entry Shares for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Parent, and upon delivery of a letter of transmittal, duly executed and in proper form, with respect to such Certificates or Book-Entry Shares, the holder of such Certificates or Book-Entry Shares will be entitled to receive the Merger Consideration for each Share formerly represented by such Certificates and for each Book-Entry Share. Any Certificates and Book-Entry Shares so surrendered will forthwith be cancelled. All cash paid upon the surrender for exchange of Certificates and Book-Entry Shares will be deemed to have been paid in full satisfaction of all rights pertaining to Shares formerly represented by such Certificates or Book-Entry Shares. If payment of the Merger Consideration is to be made to a Person other than the Person in whose name any surrendered Certificate is registered, it will be a condition precedent of payment that the Certificate so surrendered will be properly endorsed or will be otherwise in proper form for transfer, and the Person requesting such payment will have paid any transfer or similar Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate so surrendered or will have established to the satisfaction of the Paying Agent that such Taxes either have been paid or are not payable. Any other transfer or similar Taxes

13

incurred in connection with the transactions contemplated by this Agreement will be paid by the Person required to make such payment by applicable Law. Payment of the Merger Consideration with respect to Book-Entry Shares will only be made to the Person in whose name such Book-Entry Shares are registered. Until surrendered as contemplated hereby, each Certificate or Book-Entry Share will be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration in cash as contemplated by this Agreement, without any interest accruing thereon.

(c) Transfer Books; No Further Ownership Rights in Shares. At the Effective Time, the stock transfer books of the Company will be closed and thereafter there will be no further registration of transfers of Shares on the records of the Company. From and after the Effective Time, the holders of Certificates and Book-Entry Shares outstanding immediately prior to the Effective Time will cease to have any rights with respect to such Shares except as otherwise provided for herein or by applicable Law. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, then (subject to compliance with the exchange procedures of Section 3.2(b)) they will be cancelled and exchanged as provided in this Agreement.

(d) Termination of Fund; Abandoned Property; No Liability. At any time following the first anniversary of the Effective Time, the Surviving Corporation will be entitled to require the Paying Agent to deliver to it any funds (including any interest accrued with respect thereto) made available to the Paying Agent and not disbursed to holders of Certificates or Book-Entry Shares, and thereafter such holders will be entitled to look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) only as general creditors thereof with respect to the Merger Consideration payable upon due surrender of their Certificates or Book-Entry Shares and compliance with the procedures in Section 3.2(b), without interest. If, prior to six years after the Effective Time (or otherwise immediately prior to such time on which any payment in respect hereof would escheat to or become the property of any Governmental Entity pursuant to any applicable abandoned property, escheat or similar Laws), any holder of Certificates or Book-Entry Shares has not complied with the procedures in Section 3.2(b) to receive payment of the Merger Consideration to which such holder would otherwise be entitled, the payment in respect of such Certificates or Book-Entry Shares will, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto. Notwithstanding the foregoing, neither the Surviving Corporation nor the Paying Agent will be liable to any holder of a Certificate or Book-Entry Shares for Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(e) Lost, Stolen or Destroyed Certificates. In the event that any Certificates have been lost, stolen or destroyed, the Paying Agent will issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, the Merger Consideration payable in respect thereof pursuant to Section 3.1(a) hereof; provided, however, that Parent may, in its discretion and as a condition precedent to the payment of such Merger Consideration, require the owners of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may

14

reasonably direct as indemnity against any claim that may be made against Parent, Merger Sub, the Surviving Corporation or the Paying Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

(f) **Withholding Rights.** Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Shares such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable state, local or foreign Tax Law. Except for payments to employees of the Company with respect to Company Restricted Shares, Option Payments or RSU Payments, before making any such deduction or withholding, Parent or the Surviving Corporation, as applicable, shall give the Company notice of the intention to make such deduction or withholding, and such notice, which shall include the authority, basis and method of calculation for the proposed deduction or withholding, shall be given at least a commercially reasonable period of time before such deduction or withholding is required, in order for the Company to obtain reduction of or relief from such deduction or withholding. To the extent that amounts are so withheld by the Surviving Corporation or Parent, as the case may be, such withheld amounts (i) shall be remitted by Parent or the Surviving Corporation, as applicable, to the applicable Governmental Entity and (ii) shall be treated for all purposes of this Agreement as having been paid to the holder of Shares in respect of which such deduction and withholding was made by the Surviving Corporation or Parent, as the case may be.

**3.3 Dissenting Shares.** Notwithstanding anything in this Agreement to the contrary, Shares outstanding immediately prior to the Effective Time and held by a holder who is entitled to demand and has properly demanded appraisal for such Shares in accordance with, and who complies in all respects with, Section 262 of the DGCL (such Shares, the "Dissenting Shares") will not be converted into the right to receive the Merger Consideration, and will instead represent the right to receive only the payment provided by Section 262 of the DGCL. If any such holder fails to perfect or otherwise waives, withdraws or loses his right to appraisal under Section 262 of the DGCL, then the right of such holder to receive such payment in respect of such Dissenting Shares will cease and such Dissenting Shares will be deemed to have been converted, as of the Effective Time, into and will be exchangeable solely for the right to receive the Merger Consideration, without interest. The Company will give Parent prompt notice of any demands received by the Company for appraisal of Shares, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company relating to rights to be paid the fair value of Dissenting Shares, and Parent will have the right to participate in all negotiations and Proceedings with respect to such demands. The Company will not, except with the prior written consent of Parent, make any payment with respect to, or settle or compromise or offer to settle or compromise, any such demands, or approve any withdrawal of any such demands, or agree to do any of the foregoing. If any appraisal is made of Dissenting Shares and the Top-Up Option was exercised prior to the Effective Time, then the cash received and/or value of the promissory note received by the Company in payment of the exercise price of the Top-Up Option shall be treated as if it were not paid to or received by the Company and the Top-Up Shares issued upon the exercise of the Top-Up Option shall be treated as if they were not issued or outstanding in connection with the determination of the fair value of the Dissenting Shares in accordance with the applicable provisions of the DGCL.

15

#### **3.4 Treatment of Company Options, Company RSUs and Restricted Shares; Stock Plans.**

(a) **Treatment of Company Options.** Prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof) will adopt resolutions and take all other actions necessary and appropriate to provide that, immediately prior to the Effective Time, each unexpired and unexercised option to purchase Shares (the "Company Options"), under any stock option plan of the Company, including the 1997 Equity Participation Plan or the 2004 Incentive Award Plan, or any other plan, agreement or arrangement (the "Company Stock Option Plans"), whether or not then exercisable or vested, will be cancelled and, in exchange therefor, each former holder of any such cancelled Company Option will only be entitled to receive, in consideration of the cancellation of such Company Option and in full settlement therefor, a payment in cash of an amount equal to the product of (A) the total number of Shares previously subject to such Company Option and (B) the excess, if any, of the Merger Consideration over the exercise price per Share previously subject to such Company Option (such amounts payable hereunder being referred to as the "Option Payments"). From and after the Effective Time, any such cancelled Company Option will no longer be exercisable by the former holder thereof, but will only entitle such holder to the payment of the Option Payment.

(b) **Treatment of Company RSUs.** Prior to the Offer Acceptance Time, the Company Board (or, if appropriate, any committee thereof) will adopt resolutions and take all other actions necessary and appropriate to provide that, immediately prior to the Offer Acceptance Time, but conditioned upon the consummation of the Offer, each outstanding restricted stock unit awarded pursuant to any Company Stock Option Plan (the "Company RSUs"), will vest and become free of any restrictions and the Company will as promptly as practicable thereafter deliver with respect to such Company RSU (i) shares of Company Common Stock (such that such shares may be tendered in the Offer) and (ii) the amount of any declared but unpaid dividends to the holder thereof in settlement of each such Company RSU. At the Effective Time, each share of Company Common Stock issued in respect of the Company RSUs (that has not otherwise been tendered in the Offer or in any Subsequent Offering Period) will be converted into the right to receive the Merger Consideration in accordance with Section 3.1(a) (such amounts payable under this Section 3.4(b) being referred to as the "RSU Payments"). To the extent any such canceled Company RSU is subject to a deferred payment schedule pursuant to the applicable distribution provisions of Section 409A of the Code so that the RSU Payments cannot be paid to the holder within such period without the holder's incurrance of a penalty Tax and interest penalties under Section 409A of the Code, then any RSU Payments otherwise payable to the holder of such canceled Company RSU will be distributed in accordance with Section 409A of the Code and the applicable Treasury Regulations thereunder.



(c) Treatment of Company Restricted Shares. Prior to the Offer Acceptance Time, the Company Board (or, if appropriate, any committee thereof) will adopt resolutions and take all other actions necessary and appropriate to provide that, immediately prior to the Offer Acceptance Time, but conditioned upon the consummation of the Offer, each outstanding restricted share awarded pursuant to any Company Stock Option Plan (the "Company Restricted Shares"), will vest and become free of any restrictions (such that such shares may be tendered in the Offer), and the Company will deliver with respect to such Company Restricted Share the amount of any declared but unpaid dividends to the holder thereof in settlement of each such Company Restricted Share. At the Effective Time, each Company Restricted Share (that has not otherwise been tendered in the Offer or in any Subsequent Offering Period) will be converted into the right to receive the Merger Consideration in accordance with Section 3.1(a).

(d) Termination of Company Stock Option Plans. After the Effective Time, all Company Stock Option Plans will be terminated and no further Company Options, Company RSUs, Company Restricted Shares or other rights with respect to Shares will be granted thereunder.

(e) Corporate Actions. At or prior to the Effective Time, the Company, the Company Board and the compensation committee of the Company Board, as applicable, shall adopt any resolutions and take any actions which are necessary to effectuate the provisions of this Section 3.4. The Company shall take all actions necessary to ensure that from and after the Effective Time neither Parent nor the Surviving Corporation will be required to deliver to any Person any Shares or other Equity Interests of the Company, the Surviving Corporation or any other Person pursuant to or in settlement of Company Options, Company RSUs, Company Restricted Shares or other rights with respect to Shares.

#### ARTICLE 4

##### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in (i) the Company SEC Documents filed prior to the date hereof (but excluding any disclosure contained in such Company SEC Documents under the heading "Risk Factors" or "Cautionary Note Regarding Forward-Looking Statements" or similar heading and any other disclosures contained or referenced therein of factors or risks that are predictive, cautionary or forward looking in nature), (ii) the disclosure schedule delivered by the Company to Parent and Merger Sub prior to the execution of this Agreement (the "Company Disclosure Schedule") (with each exception set forth in the Company Disclosure Schedule being identified by reference to, or grouped under a heading referring to, a specific individual section or subsection of this Agreement and relating only to such section or subsection; provided, however, that a matter disclosed with respect to one representation and warranty shall also be deemed to be disclosed with respect to each other representation and warranty to which the matter disclosed reasonably relates, but only to the extent that such relationship is reasonably apparent on the face of the disclosure contained in the Company Disclosure Schedule), the Company hereby represents and warrants to Parent and Merger Sub as follows:

##### 4.1 Organization and Qualification; Subsidiaries.

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

(b) The Company has all requisite corporate power and corporate authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. The Company is duly qualified to do business in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Each Subsidiary of the Company (each, a "Company Subsidiary") is a corporation or other legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all requisite corporate or organizational, as the case may be, power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. Each Company Subsidiary is duly qualified to do business in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

(c) The Company has made available to Parent and Merger Sub accurate and complete copies of the currently effective amended and restated certificate of incorporation of the Company (the "Company Certificate") and amended and restated bylaws of the Company (the "Company Bylaws"), and the certificate of incorporation and bylaws, or equivalent organizational or governing documents, of each Company Subsidiary, and each of these organizational and governing documents is in full force and effect on the date hereof. The Company is not in violation of the Company Certificate or Company Bylaws, and the Company Subsidiaries are not in material violation of their respective organizational or governing documents.

(d) Section 4.1(d) of the Company Disclosure Schedule sets forth an accurate and complete list of the Company Subsidiaries, together with the jurisdiction of organization or incorporation, as the case may be, of each Company Subsidiary.

##### 4.2 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 50,000,000 shares of Class A Common Stock, (ii) 25,000,000 shares of Class B Common Stock, and (iii) 10,000,000 shares of preferred stock, par value \$0.01 per share (the "Company Preferred Stock"). As of the close of business on November 20, 2012, there are 21,858,086 shares of Class A Common Stock issued and outstanding (including 201,690 shares of Class A Common Stock subject to Company Restricted Shares). As of the close of business on November 20, 2012, there are 7,486,574 shares of Class B Common Stock issued and outstanding and no shares of Company Preferred Stock issued and outstanding. All of the outstanding Shares have been duly authorized and validly

18

issued and are fully paid, nonassessable and free of preemptive rights. Since the close of business on November 20, 2012 through the date of this Agreement, there have been (A) no material changes in the number of issued and outstanding Class A Common Stock, (B) no change in the number of issued and outstanding shares of Class B Common Stock and (C) no change in the number of issued and outstanding shares of Company Preferred Stock.

(b) As of the close of business on November 20, 2012, the Company has no shares of Company Common Stock or Company Preferred Stock reserved for or otherwise subject to issuance, except for (i) 2,786,143 shares of Class A Common Stock reserved for issuance pursuant to the exercise of outstanding Company Options under the Company Stock Option Plans and (ii) 272,101 shares of Class A Common Stock reserved for issuance pursuant to outstanding Company RSUs. Section 4.2(b) of the Company Disclosure Schedule sets forth an accurate and complete list of (A) each holder of Company Options, Company Restricted Shares and Company RSUs, (B) the number of Company Options, Company Restricted Shares and Company RSUs held by such holder as of the date hereof, (C) the number and class of Shares subject to each such Company Option and Company RSU (i.e., the original amount less exercises and any cancellations), (D) the exercise price of each such Company Option and (E) the amount of declared but unpaid dividends with respect to each Company Restricted Share and Company RSU. Neither the Company nor any of the Company Subsidiaries has any outstanding bonds, debentures, notes, or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the stockholders of the Company or any Company Subsidiary on any matter.

(c) Except for Company Options to purchase not more than 2,786,143 shares of Class A Common Stock and 272,101 shares of Class A Common Stock issuable pursuant to outstanding Company RSUs, as of the close of business on November 20, 2012, there are no options to acquire Shares. Other than as set forth in the previous sentence, there are no options, warrants, calls, conversion rights, stock appreciation rights, redemption rights, repurchase rights or other preemptive or outstanding rights, agreements, arrangements, commitments or other Contracts of any character obligating the Company or any Company Subsidiary to issue or sell any Shares or other Equity Interests of the Company or any Company Subsidiary or any securities obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of the Company Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. As of the date of this Agreement, there are no outstanding rights, agreements, arrangements or commitments of any character obligating the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any Shares or other Equity Interests of the Company or any Company Subsidiary.

(d) As of the close of business on November 20, 2012, the sum of (i) the issued and outstanding shares of Class A Common Stock (including shares of Class A Common Stock subject to Company Restricted Shares) plus (ii) the shares of Class A Common Stock subject to outstanding Company Options plus (iii) the shares of Class A Common Stock subject to outstanding Company RSUs does not exceed 25,040,912.

19

(e) There are no outstanding contractual obligations of the Company or any Company Subsidiary (i) affecting the voting rights of, (ii) requiring the repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (iii) requiring the registration for sale of or (iv) granting any preemptive or antidilutive rights with respect to, any Shares or other Equity Interests in the Company or any Company Subsidiary.

(f) Section 4.2(f) of the Company Disclosure Schedule sets forth, for each Company Subsidiary, as applicable: (i) the number of its outstanding shares of capital stock or other Equity Interests and type(s) of such outstanding shares of capital stock or other Equity Interests and (ii) the record owner(s) thereof. The Company or another Company Subsidiary owns, directly or indirectly, all of the issued and outstanding shares of capital stock or other Equity Interests of each of the Company Subsidiaries, free and clear of any Liens (other than Liens for Taxes not yet due and payable), and all of such shares of capital stock or other Equity Interests have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except for Equity Interests in the Company Subsidiaries, neither the Company nor any Company Subsidiary owns directly or indirectly any Equity Interest in any Person, or has any obligation or has made any commitment to acquire any such Equity Interest, to provide funds to, or to make any investment (in the form of a loan, capital contribution or otherwise) in, any Company Subsidiary or any other Person.

(g) Each Company Option (i) was granted in compliance with all applicable Laws and all of the terms and conditions of the Company Stock Option Plan pursuant to which it was issued, (ii) has an exercise price per share of Company Common Stock equal to or greater than the fair market value of such a share of Company Common Stock on the date of such grant, (iii) has a grant date identical to or after the date on which such Company Option was actually approved by the Company Board or an authorized committee or subcommittee thereof, and (iv) qualifies for

the Tax and accounting treatment afforded to such Company Option in the Company's Tax Returns and the Company Financial Statements, respectively.

#### 4.3 Authority.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, including the Offer and the Merger, subject to obtaining the Company Stockholder Approval. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby, including the Offer and the Merger, have been duly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company and no stockholder votes or written consents are necessary to authorize this Agreement or to consummate the transactions contemplated hereby other than the Company Stockholder Approval and the filing of the Certificate of Merger with

20

the Secretary of the State of Delaware. This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Parent and Merger Sub, constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar Laws, now or hereafter in effect, affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(b) At a meeting duly called and held prior to the execution and delivery of this Agreement, the Company Board adopted resolutions by which the Company Board (i) determined that the Offer and the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement, the Offer, the Merger and the other transactions contemplated hereby, in accordance with the requirements of the DGCL, (iii) recommended that the Company's stockholders vote their Shares in favor of adopting this Agreement by written consent in lieu of a meeting, (iv) resolved to recommend that the Company's stockholders accept the Offer and tender their shares of Company Common Stock pursuant to the Offer and (v) authorized the Top-Up Option, the issuance of the Top-Up Shares and the form of promissory note deliverable by Merger Sub in consideration of the Top-Up Shares, and, as of the date hereof, none of the aforesaid actions by the Company Board has been amended, rescinded or modified.

4.4 No Conflict. None of the execution, delivery or performance of this Agreement by the Company, the consummation by the Company of the Offer, the Merger or any other transaction contemplated by this Agreement, or the Company's compliance with any of the provisions of this Agreement will (with or without notice or lapse of time, or both): (a) subject to obtaining the Company Stockholder Approval, conflict with or violate any provision of the Company Certificate or Company Bylaws or any equivalent organizational or governing documents of any Company Subsidiary; (b) assuming the accuracy of the representations set forth in Section 5.6(a) and that all consents, approvals, authorizations and permits described in Section 4.5 have been obtained and all filings and notifications described in Section 4.5 have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to the Company or any Company Subsidiary or any of their respective properties or assets; (c) assuming that all consents, approvals, authorizations and permits described in Section 4.5 have been obtained and all filings and notifications described in Section 4.5 have been made and any waiting periods thereunder have terminated or expired, require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a change of control or default under, or result in termination or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien upon any of the respective properties or assets of the Company or any Company Subsidiary pursuant to, any Company Material Contract; or (d) assuming that all consents from third parties to any applicable Contracts described in Section 4.4 of the Company Disclosure Schedule have been obtained and all filings and notifications

21

described in Section 4.5 of the Company Disclosure Schedule have been made and any waiting periods thereunder have terminated or expired, constitute or result in the loss or impairment of, payment of any additional amounts with respect to, or the consent of any other Person being required in respect of, the Company's or any of the Company Subsidiaries' right to own or use any Intellectual Property Rights, except, with respect to any of clauses (b), (c) and (d), for any such conflicts, violations, consents, breaches, losses, changes of control, defaults, other occurrences or Liens which, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

4.5 Required Filings and Consents. None of the execution, delivery or performance of this Agreement by the Company, the consummation by the Company of the Offer, the Merger or any other transaction contemplated by this Agreement, or the Company's compliance with any of the provisions of this Agreement will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Entity, other than (a) the filing and recordation of the Certificate of Merger as required by the DGCL, (b) the Company Stockholder Approval, (c) compliance with any applicable requirements of the HSR Act and other applicable foreign or supranational antitrust and competition laws set forth in Section 4.5 of the Company Disclosure Schedule, (d) compliance with the applicable requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), (e) compliance with the applicable requirements of the Securities Act, (f) compliance with any applicable foreign or state securities or Blue Sky Laws, (g) filings with the United States Securities

and Exchange Commission (the "SEC") as may be required by the Company in connection with this Agreement and the transactions contemplated hereby, (h) such filings as may be required under the rules and regulations of the NYSE and (i) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to any Governmental Entity, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

#### 4.6 Permits; Compliance With Law.

(a) The Company and each Company Subsidiary holds all material authorizations, permits, certificates, exemptions, approvals, orders, consents, franchises, variances, exemptions and registrations of any Governmental Entity (the "Company Permits") necessary for the operation of the Business. The Company and each Company Subsidiary is in compliance with the terms of the Company Permits, except where the failure to be in compliance with any Company Permits, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. No suspension, modification, revocation or cancellation of any of the Company Permits is pending.

(b) Since May 31, 2009, (i) neither the Company nor any Company Subsidiary has been in conflict with, default under or violation of, or has been investigated for, or charged by any Governmental Entity with a violation of, any Law applicable to the Company or any Company Subsidiary or by which any property or asset

22

of the Company or any Company Subsidiary is or was bound, except for any conflicts, defaults, violations, investigations or charges that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect and (ii) no investigation or review by any Governmental Entity with respect to the Company or any Company Subsidiary has been pending or, to the knowledge of the Company, threatened, except for such investigations or reviews, the outcomes of which if determined adversely to the Company or any Company Subsidiary, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Neither the Company nor any Company Subsidiary has received any notice or communication of any material noncompliance with any such Laws that has not been cured as of the date hereof.

(c) None of the Company, the Company Subsidiaries or any of their Representatives has directly or indirectly offered, paid or accepted any remuneration or other thing of value that is prohibited by applicable Law, including under the United States Foreign Corrupt Practices Act of 1977. None of the Company, the Company Subsidiaries or any of their Representatives has directly or indirectly made or agreed to make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or similar payment to any Person, including (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or pay for special concessions already obtained or (iv) in connection with the approval or regulatory status of the Company Products or the facilities in which the Company Products are manufactured, packaged or stored, or from which the Company Products are initially distributed.

#### 4.7 SEC Filings; Financial Statements.

(a) Since May 31, 2010, the Company has timely filed or otherwise furnished (as applicable) all registration statements, prospectuses, forms, reports, certifications, statements and other documents required to be filed or furnished by it under the Securities Act or the Exchange Act, as the case may be, together with all certifications required pursuant to the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") (such documents and any other documents filed by the Company or any Company Subsidiary with the SEC, as have been supplemented, modified or amended since the time of filing, collectively, the "Company SEC Documents"). As of their respective effective dates (in the case of the Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Company SEC Documents), or in each case, if amended prior to the date hereof, as of the date of the last such amendment, the Company SEC Documents (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with the applicable requirements of the Exchange Act or the Securities Act, as the case may be, the Sarbanes-Oxley Act and the applicable rules and regulations of the SEC thereunder. None of the Company Subsidiaries is required to file any forms, reports or other documents with the SEC. All of the audited consolidated financial statements and unaudited consolidated interim financial statements of the Company and the consolidated Company Subsidiaries

23

included in the Company SEC Documents, including the related notes and schedules (collectively, the "Company Financial Statements") (A) have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of interim financial statements, for normal and recurring year-end adjustments) and (B) fairly present in all material respects the consolidated financial position and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and the consolidated Company Subsidiaries as of the dates and for the periods referred to therein (except as may be indicated in the notes thereto or, in the case of interim financial statements, for normal and recurring year-end adjustments).

(b) Neither the Company nor any of the Company Subsidiaries is a party to, nor has any commitment to become a party to, any joint venture, off-balance sheet partnership or similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among the Company, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC), where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in its published financial statements or other Company SEC Documents.

(c) Without limiting the generality of Section 4.7(a), since May 31, 2010, (i) Deloitte & Touche LLP and KPMG LLP have not resigned or been dismissed as independent public accountants of the Company as a result of or in connection with any disagreement with the Company on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, (ii) no executive officer of the Company has failed in any respect to make, without qualification, the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any form, report or schedule filed by the Company with the SEC since the enactment of the Sarbanes-Oxley Act, and neither the Company nor any of its executive officers has received notice from any Governmental Entity challenging or questioning the accuracy, completeness or manner of the filing of the certification required by the Sarbanes-Oxley Act and made by the Company's principal executive officer and principal financial officer and (iii) no enforcement action has been initiated or, to the knowledge of the Company, threatened against the Company by the SEC relating to disclosures contained in any Company SEC Document.

(d) Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3) or rules of the SEC, since the enactment of the Sarbanes-Oxley Act, neither the Company nor any of its affiliates has made, arranged or modified (in any material way) any extensions of credit in the form of a personal loan to any executive officer or director of the Company.

4.8 Internal Controls. The Company maintains a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is designed to provide reasonable assurance regarding the reliability of financial

24

reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that receipts and expenditures of the Company are being made in accordance with authorizations of management of the Company and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company (A) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and (B) has disclosed to the Company's auditors and the audit committee of the Company Board (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that adversely affect in any material respect the Company's ability to record, process, summarize and report financial information, and has identified for the Company's auditors and audit committee of the Company Board any material weaknesses in internal control over financial reporting and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

4.9 State Takeover Laws. Assuming the accuracy of the representations set forth in Section 5.6(a), no "fair price," "moratorium," "control share acquisition" or other anti-takeover Law, including Section 203 of the DGCL will apply with respect to or as a result of the execution of this Agreement or the consummation of the Offer, the Merger or the other transactions contemplated hereby or by the Tender and Support Agreements.

4.10 No Undisclosed Liabilities. Except for those liabilities and obligations (a) as reflected in or reserved against on the May 31, 2012 audited consolidated balance sheet of the Company included in the Company Financial Statements prior to the date of this Agreement, (b) incurred in the ordinary course of business consistent with past practice since the date of such consolidated balance sheet, (c) incurred pursuant to this Agreement or in connection with the transactions contemplated hereby or (d) as would not reasonably be expected to have a Company Material Adverse Effect, neither the Company nor any Company Subsidiary has any liabilities or obligations.

4.11 Absence of Certain Changes or Events. From June 1, 2012 through the date of this Agreement:

(a) The Company and the Company Subsidiaries have conducted their respective businesses in all material respects in the ordinary course of business.

(b) There has not occurred, arisen or come into existence any fact, change, event, development or circumstance, or any worsening thereof, which has had or would reasonably be expected to have a Company Material Adverse Effect.

25

(c) There has not been any declaration, accrual, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company or any of the Company Subsidiaries (except for dividends or other distributions by any direct or indirect wholly-owned Company Subsidiary to the Company or to any wholly-owned Company Subsidiary).

(d) There has not been any material change in any method of financial accounting or financial accounting practice or internal controls (including internal controls over financial reporting) by the Company or any Company Subsidiary.

(e) Except to the extent required by applicable Laws, there has not been (A) any (x) increase in the compensation payable or to become payable to the directors, officers or employees of the Company or the Company Subsidiaries or (y) payment to any director or officer of the Company or the Company Subsidiaries of any material bonus, making to any director or officer of the Company or the Company Subsidiaries of any material profit-sharing or similar payment, or grant to any director or officer of the Company or the Company Subsidiaries of any rights to receive severance, termination, retention or Tax gross-up compensation or benefits (in each case, except for increases, payments or grants in the ordinary course of business and consistent with past practice) or (B) any establishment, adoption, entry into or amendment of any collective bargaining, bonus, profit sharing, thrift, compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee of the Company or any Company Subsidiary.

#### 4.12 Employee Benefit Plans.

(a) Section 4.12(a) of the Company Disclosure Schedule sets forth a complete and accurate list of each Company Benefit Plan. With respect to each Company Benefit Plan, the Company has provided to Merger Sub complete and accurate copies of (i) each such Company Benefit Plan, including any material amendments thereto, and descriptions of all material terms of any such plan that is not in writing, (ii) each trust, insurance, annuity or other funding Contract related thereto, (iii) all summary plan descriptions, including any summary of material modifications, and any other material notice or description provided to retired, former or current employees, officers, consultants, independent contractors or directors of the Company or any Company Subsidiary ("Service Providers"), (iv) the most recent financial statements and actuarial or other valuation reports prepared with respect thereto, (v) the most recently received IRS determination letter, if any, issued by the IRS with respect to any Company Benefit Plan that is intended to qualify under Section 401(a) of the Code, (vi) the most recent annual report on Form 5500 (and all schedules thereto) required to be filed with the IRS with respect thereto and (vii) all other material filings and material correspondence with any Governmental Entity (including any correspondence regarding actual or, to the knowledge of the Company, threatened audits or investigations) with respect to each Company Benefit Plan.

(b) Each Company Benefit Plan (and any related trust or other funding vehicle) has been established, maintained and administered in all material respects in accordance with its terms and is in compliance in all material respects with ERISA, the Code and all other applicable laws.

26

(c) The Company has no Company Benefit Plans that are maintained primarily for the benefit of Service Providers outside of the United States.

(d) Each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code has timely received or applied for a favorable determination letter or is entitled to rely on a favorable opinion letter from the IRS, in either case, that has not been revoked and, to the knowledge of the Company, no event or circumstance exists that has adversely affected or would reasonably be expected to adversely affect such qualification or exemption. None of the Company, any Company Subsidiary, any Company Benefit Plan, any trustee, administrator or other third-party fiduciary or party-in-interest, with respect to any Company Benefit Plan, has engaged in any breach of fiduciary responsibility or non-exempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) which could result in the imposition of a material penalty assessed pursuant to Section 502(i) of ERISA or a material Tax imposed by Section 4975 of the Code on the Company or any Company Subsidiary.

(e) No Proceeding has been brought, or is overtly threatened in written communication with the Company, against or with respect to any Company Benefit Plan, including any audit or inquiry by the IRS or the United States Department of Labor (other than routine claims for benefits arising under such plans).

(f) No Company Benefit Plan is, and neither the Company nor any ERISA Affiliate thereof sponsors, maintains, contributes to, or has ever sponsored, maintained, contributed to, or has any actual or contingent liability with respect to any (i) single employer plan or other pension plan that is subject to Section 302 or Title IV of ERISA or Section 412 of the Code, (ii) "multiple employer plan" within the meaning of Section 413(c) of the Code, (iii) any "multiemployer plan" within the meaning of Section 3(37) of ERISA or (iv) multiple employer welfare arrangement (within the meaning of Section 3(4) of ERISA).

(g) None of the execution, delivery or performance of this Agreement by the Company, the consummation by the Company of any transaction contemplated by this Agreement, nor the Company's compliance with any of the provisions of this Agreement (alone or in conjunction with any other event, including any termination of employment on or following the Effective Time), will result in any "parachute payment" under Section 280G of the Code. The Company has made available to Parent copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions contemplated by this Agreement.

(h) The Company does not have any liability in respect of, or obligation to provide, post-retirement health, medical, disability, life insurance benefits or other welfare benefits for Service Providers (or the spouses, dependent or beneficiaries of any Service Providers), whether under a Company Benefit Plan or otherwise, except as required to comply with Section 4980B of the Code or any similar law.

27

(i) None of the execution, delivery or performance of this Agreement by the Company, the consummation by the Company of the Offer, the Merger or any other transaction contemplated by this Agreement, or the Company's compliance with any of the provisions of this Agreement will (either alone or in conjunction with any other event, including any termination of employment on or following the Effective Time) (i) entitle any Service Provider to any compensation or benefit, (ii) accelerate the time of payment or vesting, increase the amount of payment, or trigger any payment or funding, of any compensation or benefit or trigger any other material obligation under any Company Benefit Plan, (iii) trigger any funding (through a grantor trust or otherwise) of compensation, equity award or other benefits, (iv) otherwise give rise to any material liability under any Company Benefit Plan or (v) limit or restrict the right to merge, materially amend, terminate or transfer the assets of any Company Benefit Plan on or following the Effective Time.

(j) No Company Benefit Plan provides for any gross-up, reimbursement or additional payment by reason of any Tax imposed under Section 409A or Section 4999 of the Code. Each Company Benefit Plan that constitutes a nonqualified deferred compensation plan (within the meaning of Section 409A of the Code) is set forth in Section 4.12(j) of the Company Disclosure Schedule and has been maintained and operated in material good faith documentary and operational compliance with Section 409A or the Code or an available exemption therefrom, other than any instance where such non-compliance can be corrected without a material Liability to the Person either under an Internal Revenue Service correction program or under the principles set forth in Proposed Treasury Regulation 1.409A-4.

#### 4.13 Labor and Other Employment Matters.

(a) The Company is in compliance in all material respects with all applicable Laws respecting labor, employment, immigration, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety, plant closings, compensation and benefits, and wages and hours.

(b) The Company is not and has not been a party to any collective bargaining, employee association or works council or similar Contract, and there are not, to the knowledge of the Company, any union, employee association or works council organizing activities concerning any Service Provider. The Company has not recognized any trade union, whether voluntarily or in terms of any statutory procedure as set out in any applicable law. There have been no labor strikes, slowdowns, work stoppages, picketings, negotiated industrial actions or lockouts pending or, to the knowledge of the Company, threatened, against the Company. There is no unfair labor practice charge against the Company or any of the Company Subsidiaries pending before the National Labor Relations Board or any comparable labor relations authority and there is no pending or, to the knowledge of the Company, threatened grievance, charge, complaint, audit or investigation by or before any Governmental Entity with respect to any Service Providers in their capacities as such.

28

(c) In the three years prior to the date of this Agreement, the Company has not effectuated a plant closing or mass layoff, as defined in the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101, et. seq., affecting any one or more sites of employment or one or more facilities or operating units within any site of employment or facility of the Company.

(d) The Company has made available to Parent with respect to each current Service Provider (other than non-employee directors of the Company or any Company Subsidiary), including any current Service Provider who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, including disability, family or other leave, sick leave or on layoff status subject to recall the following as of the date hereof: (i) the name of such Service Provider and the date as of which such Service Provider was originally hired by the Company or any Company Subsidiary, as applicable, and whether such Service Provider is on an active or inactive status, (ii) such Service Provider's title, pay grade and supervisor name, (iii) such Service Provider's annualized compensation as of the date of this Agreement, including base salary, vacation and paid time off accrual amounts, bonus and commission potential, severance pay potential and any other compensation forms, if applicable, (iv) whether such Service Provider is not fully available to perform work because of a qualified disability or other leave and, if applicable, the type of leave (e.g., disability, workers compensation, family or other leave protected by applicable Law) and the anticipated date of return to full service, (v) whether such Service Provider is employed by the Company or one of the Company Subsidiaries, and, if by any of the Company Subsidiaries, the name of the Company Subsidiaries, (vi) the facility at which such Service Provider is deemed to be located, and (vii) any outstanding equity awards held by such Service Provider.

#### 4.14 Contracts.

(a) Section 4.14(a) of the Company Disclosure Schedule sets forth an accurate and complete list of each Contract to which the Company or any Company Subsidiary is a party to or bound by which falls within any of the following categories:

(i) any Contract that (A) limits or restricts in any material respect to the Company or any Company Subsidiary from competing or engaging in any line of business or in any geographic area, (B) grants any "most favored nation" status to Persons other than the Company or the Company Subsidiaries or (C) is a minimum purchase or "take or pay" Contract;

(ii) any Contract that by its terms limits the payment of dividends or other distributions to stockholders by the Company or any Company Subsidiary;

(iii) any Contract relating to indebtedness for borrowed money or any financial guaranty in excess of \$2,500,000 individually;

29

(iv) any Contract that contains a put, call or similar right pursuant to which the Company or any of the Company Subsidiaries could be required to purchase or sell, as applicable, any Equity Interests of any Person or assets that have a fair market value or purchase price of more than \$2,500,000;

(v) any material lease, sublease or other Contract with respect to the Leased Real Property;

(vi) any Contract with any customers or licensees of, or suppliers to, the Company or any Company Subsidiary which involved payments to or from the Company or any Company Subsidiary in the most recent 12 month period of in excess of \$2,500,000;

(vii) any Contract containing any standstill or similar provision pursuant to which the Company or any Company Subsidiary would be prohibited from acquiring assets or securities of another Person;

(viii) any Contract evidencing a partnership, joint venture or other similar arrangement;

(ix) any Contract between or among the Company or any Company Subsidiary, on the one hand, and any directors, executive officers (as such term is defined in the Exchange Act) or any beneficial owner of 5% or more of any class of capital stock of the Company (other than the Company) or any affiliate of the foregoing, on the other hand, other than employment, indemnification, stock option or similar Contracts entered into in the ordinary course of business;

(x) any Contract relating to an acquisition, divestiture, merger or similar transaction that has continuing indemnification or other contingent payment obligations;

(xi) any Contract that is a license or other Contract pursuant to which (A) the Company or any of the Company Subsidiaries has licensed or otherwise granted rights in or to any of the Company's Intellectual Property Rights to any Person (other than standard non-disclosure Contracts and standard non-exclusive licenses granted in the ordinary course of business), or (B) any Person has licensed or sublicensed to the Company or any of the Company Subsidiaries, or otherwise authorized the Company or any of the Company Subsidiaries to use, any third-party Intellectual Property Rights that are material to the Company (other than non-disclosure Contracts and standard, unmodified, off-the-shelf Software commercially available on standard terms from third-party vendors (e.g., Microsoft Windows));

(xii) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); and

(xiii) any other Contract which by its terms would prohibit the consummation of the Offer, the Merger or any other transaction contemplated by this Agreement.

30

Each Contract of the type described in this Section 4.14(a) is referred to herein as a "Company Material Contract." Accurate and complete copies of each Company Material Contract have been made available by the Company to Parent, or publicly filed with the SEC, in each case prior to the date of this Agreement.

(b) (i) Each Company Material Contract is a valid and binding obligation of the Company or the Company Subsidiaries and, to the knowledge of the Company, of the other party or parties thereto, in accordance with its terms, and is in full force and effect except that (x) such enforcement may be subject to applicable bankruptcy, insolvency or other similar laws, now or hereafter in effect, affecting creditors' rights generally and (y) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Proceeding therefor may be brought; (ii) the Company and each Company Subsidiary has in all material respects performed all obligations required to be performed by it under each Company Material Contract and, to the knowledge of the Company, each other party to each Company Material Contract has in all material respects performed all obligations required to be performed by it under such Company Material Contract; and (iii) none of the Company or any Company Subsidiary has received written notice of any material violation or material default under (nor, to the knowledge of the Company, does there exist any condition which upon the passage of time or the giving of notice or both would cause such a material violation of or material default under) any Company Material Contract.



#### 4.15 Litigation.

(a) There is no civil, criminal or administrative suit, claim, action, hearing, arbitration, investigation or other proceeding (a "Proceeding"), other than civil claims exclusively for money damages not in excess of \$500,000, pending or, to the knowledge of the Company, threatened against the Company or any Company Subsidiary.

(b) Neither the Company nor any Company Subsidiary is subject to any outstanding order, writ, injunction, judgment, award, decree, ruling or determination of any Governmental Entity (each, an "Order").

#### 4.16 Environmental Matters.

(a) Each of the Company and the Company Subsidiaries is now and since January 1, 2009 has been in compliance in all material respects with all applicable Environmental Laws. The Company has obtained, or has made timely and complete application for renewal of, and is in compliance in all material respects with, all Environmental Permits necessary for the conduct and operation of the Business as now being conducted.

(b) There is not now and since January 1, 2009 there has not been any Hazardous Substances generated, treated, stored, transported, disposed of, released, or otherwise existing on, under, about, or emanating from or to, any property currently

31

owned, leased or operated by the Company and the Company Subsidiaries, any property previously owned, leased or operated by the Company and the Company Subsidiaries at the time the Company or the Company Subsidiaries, as applicable owned, leased or operated said property, except in compliance with, and as would not result in material liability under, any applicable Environmental Laws.

(c) Since January 1, 2009, the Company and the Company Subsidiaries have not received any written notice of alleged liability for, or any investigation or written inquiry regarding, any release or threatened release of Hazardous Substances or alleged violation of, or non-compliance with, any Environmental Law.

(d) Neither the Company nor any of the Company Subsidiaries is subject to any Order or Contract with any Governmental Entity or any indemnity or other agreement with any third party relating to liability or obligations under any Environmental Law.

(e) The Company has made available to Parent prior to the date of this Agreement true, correct and complete copies of any environmental reports, studies, assessments, and other material environmental information in its possession relating to the Company, the Company Subsidiaries and their current or former properties or operations.

#### 4.17 Intellectual Property.

(a) General. Section 4.17(a)(i)-(iv) of the Company Disclosure Schedule sets forth with respect to the Intellectual Property Rights registered or applied for in the name of the Company or any Company Subsidiary ("Registered Intellectual Property," and together with other Intellectual Property Rights owned or purported to be owned by the Company or any Company Subsidiary, the "Owned Intellectual Property"): (i) for each patent and patent application, the patent number or application serial number for each jurisdiction in which the patent or application has been filed, the respective jurisdiction where filed, the date filed or issued, and the present status thereof; (ii) for each trademark, tradename or service mark that is registered, for which a pending application for registration has been filed, the application serial number or registration number, the jurisdiction where filed, the date filed or granted, and the class of goods covered, in each case, if applicable; (iii) for any URL or Internet domain name, the registration date, any renewal date and name of the Internet domain name registrar; and (iv) for each copyrighted work for which a registration has been filed, the registration number, date of registration and the jurisdiction in which the copyright has been filed. All Intellectual Property Rights issued or registered to the Company or any Company Subsidiary are subsisting, and to knowledge of the Company, valid and enforceable. Section 4.17(a) of the Company Disclosure Schedule lists all material licenses granted to the Company or any of the Company Subsidiaries to Intellectual Property Rights applicable to the Company Products and the Business ("Licensed Intellectual Property"), other than standard, unmodified, off-the-shelf Software commercially available on standard terms from third-party vendors (e.g., Microsoft Windows).

32

(b) Sufficiency. The Company and the Company Subsidiaries own or have valid and sufficient rights to all Intellectual Property Rights and to use Technology that claim or cover the Company Products, or that are incorporated in or necessary for the design, manufacture, use, distribution or sale of the Company Products as currently marketed (collectively referred to herein as the "Material Intellectual Property"). To the knowledge of the Company, the Material Intellectual Property (other than standard, unmodified, off-the-shelf Software commercially available on standard terms from third-party vendors (e.g., Microsoft Windows)) constitutes all Intellectual Property Rights and Technology necessary for the conduct of the Business as presently conducted, including for the design, manufacture, use, distribution and sale of the Company Products. Nothing in this subsection (b) shall be deemed a representation or warranty of non-infringement of third party Intellectual Property Rights.

(c) Ownership. The Company or each Company Subsidiary exclusively owns the Owned Intellectual Property, free and clear of Liens (other than Permitted Liens). The Company and each Company Subsidiary's rights in and to the Owned Intellectual Property will not be impaired or cease to be valid and enforceable, and no license to Licensed Intellectual Property will terminate or expire, or be modified adversely to the Company or any of the Company Subsidiaries, in each case by reason of the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby. To the knowledge of the Company, neither the execution, delivery or performance of this Agreement, nor the consummation of the Offer, the Merger or the other transactions contemplated hereby, will trigger or create any license under or Lien on any Intellectual Property Rights owned or held by Parent or any of its affiliates under the terms of any Contract to which the Company or any Company Subsidiary is a party. All of the Company's and each Company Subsidiary's current and former employees, officers, contractors and consultants have executed valid and enforceable Intellectual Property Rights assignment and confidentiality agreements for the benefit of the Company and such Company Subsidiary.

(d) Absence of Claims; Non-infringement. To the knowledge of the Company, neither the conduct of the Business nor the design, manufacture, use, distribution or sale of the Company Products by the Company or any Company Subsidiary infringes, misappropriates or otherwise violates the Intellectual Property Rights of any other Person. No Proceedings have been instituted in the last three years or are pending, or to the knowledge of the Company are threatened against, the Company or any Company Subsidiary, that challenge the Company's or any Company Subsidiary's ownership of Owned Intellectual Property or right to use the Licensed Intellectual Property. To the knowledge of the Company, no interference, opposition, reissue, reexamination, or other similar proceeding is or has been pending or, to the knowledge of the Company, threatened, in which the scope, validity, or enforceability of any of the Owned Intellectual Property is being or has been, contested or challenged. Since May 31, 2009, the Company has not received any written notice alleging the invalidity or unenforceability of the Owned Intellectual Property (excluding, for clarity, all correspondence with patent authorities with respect to ordinary course patent prosecution activities), or any misappropriation of any other Person's Trade Secrets by the research, development, manufacture, use, distribution or sale of any Company Product. Since

33

May 31, 2009, no Person has notified the Company that it is claiming any ownership of or right to use any Owned Intellectual Property. The Owned Intellectual Property is not subject to any outstanding Order of an arbitrator or court or other Governmental Entity affecting adversely the rights of the Company or any Company Subsidiary with respect thereto (excluding communications and decisions made in the ordinary course of patent prosecution). To the knowledge of the Company, no Person has infringed upon, misappropriated or otherwise violated any rights in or to any of the Material Intellectual Property, or is currently doing so.

(e) Licenses to Third Parties. Section 4.17(e) of the Company Disclosure Schedule lists all Contracts pursuant to which any Person has been granted any license under, or otherwise has received or acquired any right to use (whether or not currently exercisable), the Owned Intellectual Property. Neither the Company nor any Company Subsidiary is bound by, and no Owned Intellectual Property is subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of the Company or any Company Subsidiary to use, exploit, assert, or enforce any of the Owned Intellectual Property anywhere in the world.

(f) Protection of Intellectual Property Rights. All of the registrations and pending applications with or to governmental or regulatory bodies with respect to the Owned Intellectual Property have been timely and duly filed, and prosecution of such applications has been diligently conducted, except in each case as the Company or a Company Subsidiary has elected in its reasonable business judgment to abandon or permit to lapse a registration or application, and as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each Company Subsidiary has taken reasonable steps (including, entering into written confidentiality and nondisclosure agreements with officers, directors, subcontractors, employees, licensees and customers in connection with its assets or the Business) to safeguard and maintain the secrecy and confidentiality of Trade Secrets that are material to the Business.

(g) Software. The Company and each of the Company Subsidiaries maintain and use reasonable efforts to enforce policies and procedures regarding data security, privacy, data transfer and the use of data that enable the Company and the Company Subsidiaries to comply with all applicable Laws, except where the failure to maintain and be in compliance with such policies would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each of the Company Subsidiaries has used commercially reasonable efforts to prevent the introduction into any Software owned by the Company or the Company Subsidiaries, or into any computer system or network owned or controlled by the Company or any Company Subsidiary, and to the knowledge of the Company, such Software, systems and networks do not contain, any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have any of the following functions: disrupting or disabling, the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed. To the knowledge of the Company, since May 31, 2010, no

34

Person has gained unauthorized access to any of the computer systems, networks or data used by the Company or any of the Company Subsidiaries that would compromise to any material degree the value or confidentiality of such computer systems, networks or data or that would

necessitate that the Company or any Company Subsidiary notify a third Person of such unauthorized access.

#### 4.18 Tax Matters.

(a) Tax Returns. The Company and each Company Subsidiary have timely filed (taking into account any extension of time within which to file) all material Tax Returns required to have been filed by or with respect to the Company or any Company Subsidiaries, and all such Tax Returns are true, complete and accurate in all material respects. No claim has been made in the past three years in writing by a Governmental Entity in a jurisdiction where the Company or any Company Subsidiary does not file Tax Returns that the Company or any Company Subsidiary is or may be subject to material Taxes in such jurisdiction.

(b) Payment of Taxes. All material Taxes of the Company and each Company Subsidiary due and payable (whether or not shown or required to be shown on any Tax Return) have been timely paid except for those Taxes that are being contested in good faith by appropriate proceedings and for which reserves have been established in accordance with GAAP.

(c) Audits, Investigations or Claims. No deficiencies for any amount of material Taxes have been proposed or assessed in writing against any of the Company and the Company Subsidiaries by any Governmental Entity. Neither the Company nor any of the Company Subsidiaries (i) is the subject of any currently ongoing Tax audit or other proceeding with respect to material Taxes and (ii) has waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, which waiver or extension is currently in effect.

(d) Tax Sharing Agreements. Neither the Company nor any Company Subsidiary has any liability under any agreement for the sharing, indemnification or allocation of Taxes (other than customary provisions for Taxes contained in credit, lease or other commercial agreements the primary purposes of which do not relate to Taxes).

(e) Other Entity Liability. None of the Company or any Company Subsidiary has any liability for the Taxes of any Person (other than Taxes of the Company and the Company Subsidiaries) under Treasury regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), or as a transferee or successor, by Contract or otherwise (excluding customary Tax indemnification provisions in ordinary course commercial Contracts not primarily relating to Taxes, such as gross-up obligations in financing agreements or Tax escalation provisions in leases).

(f) Withholding. Each of the Company and the Company Subsidiaries has withheld and, to the extent required by Law, paid to the appropriate Governmental Entity all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.

35

(g) Spin-Offs. Neither the Company nor any Company Subsidiary has been a "distributing corporation" or a "controlled corporation" (within the meaning of section 355 of the Code) in a transaction intended to qualify under section 355 of the Code within the past two years.

(h) Listed Transactions. Neither the Company nor any Company Subsidiary has entered into any "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

4.19 Insurance. The Company and each Company Subsidiary maintains insurance coverage with reputable and financially sound insurers, or maintains self-insurance practices, in such amounts and covering such risks as are in accordance with customary industry practice for companies engaged in businesses similar to that of the Company and the Company Subsidiaries. The Company has made available to Parent accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets and operations of the Company and the Company Subsidiaries (the "Insurance Policies"). Each of the Insurance Policies is in full force and effect, all premiums due and payable thereon have been paid and the Company and the Company Subsidiaries are in compliance in all material respects with the terms and conditions of such Insurance Policies. Since May 31, 2010, neither the Company nor any Company Subsidiary has received any written notice regarding any invalidation or cancellation of any Insurance Policy that has not been renewed in the ordinary course without any lapse in coverage.

4.20 Properties and Assets. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company or the Company Subsidiaries, as the case may be, have valid and subsisting ownership interests in all of the material tangible personal property reflected in the May 31, 2012 audited consolidated balance sheet included in the Company SEC Reports prior to the date hereof as being owned by the Company or any Company Subsidiaries or acquired after the date thereof (except tangible personal properties sold or otherwise disposed of since the date thereof in the ordinary course of business), free and clear of all Liens, other than Permitted Liens and (ii) the tangible personal property owned by the Company or the Company Subsidiaries is in satisfactory operating condition and repair for its continued use as it has been used in all material respects, subject to reasonable wear and tear.

#### 4.21 Real Property.

(a) Section 4.21(a) of the Company Disclosure Schedule sets forth (i) an accurate and complete list of all real property leased or subleased by the Company or any Company Subsidiary (collectively, the "Leased Real Property"), (ii) the address for each Leased Real Property and (iii) the

name of the third party lessor(s) thereof, the date of the lease contract relating thereto and all amendments thereof. The Company and

36

each Company Subsidiary have a valid and subsisting leasehold interest in all Leased Real Property leased by them, in each case free and clear of all Liens, other than Permitted Liens.

(b) Neither the Company nor any of the Company Subsidiaries owns any real property or is a party to any Contract or otherwise has any obligation to acquire any real property.

(c) Neither the Company nor any Company Subsidiary has received written notice of any Proceedings in eminent domain, condemnation or other similar Proceedings that are pending, and, to the knowledge of the Company, there are no such Proceedings threatened, affecting any portion of the Leased Real Property.

4.22 Opinion of Financial Advisor. The Company Board has received the opinion (the "Fairness Opinion") of Houlihan Lokey Capital, Inc. ("Houlihan") to the effect that, based upon and subject to the assumptions, qualifications and other matters set forth therein, as of the date of such opinion, the Offer Price to be received in the Offer and the Merger Consideration to be received in the Merger by the holders of Class A Common Stock is fair to such stockholders from a financial point of view.

4.23 Required Vote. Assuming the accuracy of the representations set forth in Section 5.6(a), the affirmative vote or written consent of the holders of Shares representing a majority of the voting power of the outstanding shares of the Company Common Stock entitled to vote thereon (the "Required Vote") is the only vote required of the holders of any class of capital stock of the Company to adopt this Agreement (the "Company Stockholder Approval").

4.24 Brokers. Except for the Company's obligations to Houlihan and to Rothschild, neither the Company nor any stockholder, director, officer, employee or affiliate of the Company, has incurred or will incur on behalf of the Company or any Company Subsidiary, any brokerage, finders', advisory or similar fee in connection with the transactions contemplated by this Agreement, including the Merger. The Company has heretofore made available to Parent accurate and complete copies of all agreements between the Company and each of (a) Houlihan and (b) Rothschild, pursuant to which either such firm would be entitled to any payment, commission, fees or expenses in connection with the Merger or any other transactions contemplated by this Agreement.

4.25 Related Party Transactions. There are no outstanding amounts payable to or receivable from, or advances by the Company or any Company Subsidiary to, and neither the Company nor any Company Subsidiary is otherwise a creditor or debtor to, or party to any material Contract or transaction with, any holder of 5% or more of the Company Common Stock or any director, officer, or affiliate of the Company or any Company Subsidiary, or to any relative of any of the foregoing, except for employment or compensation agreements or arrangements with directors and officers of the Company or the Company Subsidiaries.

37

4.26 Certain Regulatory Matters. Except as would not, individually or in the aggregate, be reasonably likely to have a Company Material Adverse Effect:

(a) Each Company Product subject to the Federal Food, Drug and Cosmetic Act (the "FDCA"), the Food and Drug Administration ("FDA") regulations promulgated thereunder, or similar legal provisions in any domestic or foreign jurisdiction has, since May 31, 2009, been manufactured, packaged, labeled, marketed, sold and distributed in compliance with all applicable requirements under the FDCA or similar applicable Laws.

(b) Since May 31, 2009, (i) neither the Company nor any Company Subsidiary has received any written notice or other communication from the FDA or any other Governmental Entity in any domestic or foreign jurisdiction alleging any violation of any Law by the Company or any Company Subsidiary applicable to any Company Product and (ii) no Governmental Entity in any domestic or foreign jurisdiction having legal responsibility for the regulation of the Company Products has served any written notice, warning letter, untitled letter, regulatory letter, FDA Form 483, or any other similar written communication on the Company or any Company Subsidiary (A) alleging or asserting that their businesses were or are in violation of any Law; (B) alleging or asserting that the Company or any Company Subsidiary was or is the subject of any pending or threatened Governmental Entity investigation, Proceeding or inquiry, (C) revoking, or threatening to revoke, or refusing, or threatening to refuse, to renew any Company Permits (D) contesting any authorization for use, use of, or labeling or promotion of any Company Products; (E) commencing, or threatening in writing to initiate, any action to request the recall of any Company Products; (F) commencing, or threatening in writing to initiate, any action to enjoin, limit or challenge the manufacture, distribution, marketing, labeling, advertising or promotion of any Company Products, regardless of where manufactured; or (G) commencing or threatening in writing to initiate an import detention, import alert, or any other restriction on the importation of any Company Products or ingredients used to formulate Company Products.

(c) Since May 31, 2009, the Company and the Company Subsidiaries have at all times marketed and distributed the Company Products in material compliance with applicable Laws and Orders, and none of the marketing and promotional materials used with respect to any Company Products, including without limitation the labels and labeling and websites for the Company Products, is or has been false or misleading in any material respect.

(d) To the knowledge of the Company, the manufacture of the Company Products by, or on behalf of, the Company and the Company Subsidiaries has, since May 31, 2009, been conducted in compliance with applicable Laws and Orders, including the FDA's good manufacturing practice regulations and regulations governing dietary supplement quality control. The processes used to produce the Company Products are designed so that each Company Product will conform to the specifications established therefor over the shelf life of such Company Product and will be safe for its intended use.

38

(e) Since May 31, 2009, neither the Company nor any of the Company Subsidiaries has either voluntarily or involuntarily initiated, conducted or issued any recall, field notification, field correction, market withdrawal or replacement, inventory destruction, safety alert, stock recovery or replacement or other notice relating to an alleged lack of safety or regulatory compliance of any Company Product. To the knowledge of the Company, there are no facts or circumstances that, individually or in the aggregate, would be reasonably expected to cause (1) the recall, market withdrawal or replacement of any Company Product; (2) a change in the marketing classification or a material change in the labeling of any such Company Product; or (3) a termination or suspension of the marketing, or seizure, of a Company Product.

(f) To the knowledge of the Company, no officer, employee or representative of the Company or any Company Subsidiary has made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA or any other Governmental Entity to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy, such as FDA Compliance Policy Guide 120.100. To the knowledge of the Company, the Company and the Company Subsidiaries have not used in any capacity the services of any individual or entity debarred under 21 U.S.C. § 335a(a) or any similar laws, rules or regulations in connection with a Company Product, and none of the Company, the Company Subsidiaries or, to the knowledge of the Company, any of their respective directors, officers, agents or employees, has engaged in any conduct that has resulted, or would reasonably be expected to result, in debarment under 21 U.S.C. § 335a(a) or any similar laws, rules or regulations.

(g) Since March 30, 2012, the Company and each Company Subsidiary has complied with, and is currently in compliance, in all material respects, with all provisions of the Stipulated Final Judgment and Order for Injunctive and Other Equitable Relief entered into between Airborne, Inc. and the FTC, including but not limited to, substantiation requirements, compliance monitoring requirements, reporting requirements, and record-keeping requirements.

4.27 Information Supplied. None of the information supplied or to be supplied by the Company for inclusion or incorporation by reference in the Amended Offer Documents, the Schedule 14D-9 or the Information Statement will, when filed with the SEC, when amended or supplemented and when first mailed or disseminated to the Company's stockholders, 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 made therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by the Company with respect to statements made therein based on information supplied by Parent or Merger Sub in writing expressly for inclusion therein. The Schedule 14D-9 and the Information Statement will comply as to form in all material respects with the provisions of the Exchange Act and any other applicable federal securities Laws.

39

4.28 Bayer Merger Agreement. The Company has (a) terminated the Bayer Merger Agreement in accordance with its terms and has no further obligations thereunder, (b) paid to Bayer the Breakup Fee (as defined in the Bayer Merger Agreement) of \$22,000,000 pursuant to Section 7.2(b) of the Bayer Merger Agreement and (c) instructed Bayer to return to the Company or destroy any non-public information previously furnished to Bayer or to Bayer's Representatives by or on behalf of the Company or any Company Subsidiary.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the Disclosure Schedule delivered by Parent and Merger Sub to the Company prior to the execution of this Agreement (the "Parent Disclosure Schedule") (with each exception set forth in the Parent Disclosure Schedule being identified by reference to, or grouped under a heading referring to, a specific individual section or subsection of the Agreement and relating only to such section or subsection; provided, however, that a matter disclosed with respect to one representation or warranty shall also be deemed to be disclosed with respect to each other representation or warranty to which the matter disclosed reasonably relates, but only to the extent that such relationship is

reasonably apparent on the face of the disclosure contained in the Parent Disclosure Schedule), Parent and Merger Sub hereby represent and warrant to the Company as follows:

5.1 Organization and Qualification. Parent is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Parent has all requisite limited liability company power and authority, and Merger Sub has all requisite corporate power and authority, to own, lease and operate their respective properties and assets and to carry on their respective businesses as they are now being conducted. Each of Parent and Merger Sub is duly qualified to do business in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect.

5.2 Authority. Each of Parent and Merger Sub has all necessary limited liability company or corporate, respectively, power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, including the Offer and the Merger. The execution and delivery of this Agreement by each of Parent and Merger Sub, as applicable, and the consummation by Parent and Merger Sub of the transactions contemplated hereby, including the Offer and the Merger, have been duly authorized by all necessary corporate action, and no other corporate proceedings on the part of Parent or Merger Sub and no stockholder votes are

40

necessary to authorize this Agreement or to consummate the transactions contemplated hereby, subject to the adoption of this Agreement (following its execution) by Parent as the sole stockholder of Merger Sub. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub, and assuming due authorization, execution and delivery by the Company, constitutes the valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar Laws, now or hereafter in effect, affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Proceeding therefor may be brought.

5.3 No Conflict. None of the execution, delivery or performance of this Agreement by Parent or Merger Sub, the consummation by Parent or Merger Sub of the Offer, the Merger or any other transaction contemplated by this Agreement, or compliance by Parent or Merger Sub with any of the provisions of this Agreement will (with or without notice or lapse of time, or both): (a) conflict with or violate any provision of the certificate of incorporation or by-laws or similar organizational and governing documents of Parent or Merger Sub; (b) assuming that all consents, approvals, authorizations and permits described in Section 5.4 have been obtained and all filings and notifications described in Section 5.4 have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Parent or Merger Sub or any other Subsidiary of Parent (each a "Parent Subsidiary" and, collectively, the "Parent Subsidiaries") or any of their respective properties or assets; or (c) assuming that all consents, approvals, authorizations and permits described in Section 5.4 have been obtained and all filings and notifications described in Section 5.4 have been made and any waiting periods thereunder have terminated or expired, require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a default under, or result in termination or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien upon any of the respective properties or assets of Parent, Merger Sub or any Parent Subsidiary pursuant to, any Contract, to which Parent, Merger Sub or any Parent Subsidiary is a party, except, with respect to clauses (b) and (c), for any such conflicts, violations, consents, breaches, losses, defaults, other occurrences or Liens which, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect.

5.4 Required Filings and Consents. None of the execution, delivery or performance of this Agreement by Parent and Merger Sub, the consummation by Parent and Merger Sub of the Offer, the Merger or any other transaction contemplated by this Agreement, or compliance by Parent or Merger Sub with any of the provisions of this Agreement will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Entity, other than (a) the filing of the Certificate of Merger as required by the DGCL, (b) compliance with any applicable requirements of the HSR Act and the other applicable foreign or supranational antitrust and competition laws set forth in Section 5.4 of the Parent Disclosure Schedule, (c) compliance with the applicable

41

requirements of the Exchange Act, (d) compliance with the applicable requirements of the Securities Act, (e) compliance with any applicable foreign or state securities or Blue Sky Laws, (f) filings with the SEC as may be required by Parent or Merger Sub in connection with this Agreement and the transactions contemplated hereby, (g) such filings as may be required under the rules and regulations of the NYSE and (h) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to any Governmental Entity, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect.

5.5 Litigation.

(a) There is no Proceeding pending or, to the knowledge of Parent, threatened against Parent or Merger Sub that, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect or challenges the validity of the Offer or the Merger.

(b) Neither Parent nor Merger Sub is subject to any outstanding Order that, individually or in the aggregate, has had or would reasonably be expected to have a Parent Material Adverse Effect.

#### 5.6 Ownership of Company Common Stock.

(a) Neither Parent nor Merger Sub is, nor at any time during the last three years has it been, an "interested stockholder" of the Company as defined in Section 203 of the DGCL (other than as contemplated by this Agreement and the Support Agreements).

(b) Neither Parent nor any of its Subsidiaries owns (beneficially or otherwise) any Shares or other Equity Interests in the Company or any options, warrants or other rights to acquire Company Common Stock or other Equity Interests in the Company (or any other economic interest through derivative securities or otherwise in the Company) (other than as contemplated by this Agreement and the Support Agreements).

5.7 Sufficient Funds. Parent and Merger Sub will have all of the funds available as and when needed that are necessary to consummate the Offer and the Merger and to perform their respective obligations under this Agreement.

#### 5.8 Ownership of Merger Sub; No Prior Activities.

(a) Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement.

(b) Except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement, Merger Sub has not and will not prior to the Closing Date have incurred, directly or indirectly, through any Subsidiary or affiliate, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

42

5.9 Management Arrangements. As of the date hereof, except as previously disclosed to the Company, none of Parent or Merger Sub, or their respective executive officers, directors or affiliates, has entered into any agreement, arrangement or understanding with any of the executive officers, directors or affiliates of the Company that is currently in effect or would become effective in the future (upon consummation of the Offer, the Merger or otherwise) and that would be required to be disclosed under Item 1005(d) of Regulation M-A under the Exchange Act.

5.10 Brokers. Other than Morgan Stanley & Co. Limited, neither Parent, Merger Sub nor any of their respective stockholders, directors, officers, employees or affiliates, has incurred or will incur on behalf of Parent, Merger Sub or any Parent Subsidiary, any brokerage, finders', advisory or similar fee in connection with the transactions contemplated by this Agreement.

5.11 Information Supplied. None of the information supplied or to be supplied by Parent or Merger Sub for inclusion or incorporation by reference in the Amended Offer Documents, the Schedule 14D-9 or the Information Statement will, when filed with the SEC, when amended or supplemented and when first mailed or disseminated to the Company's stockholders, 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 made therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by Parent or Merger Sub with respect to statements made therein based on information supplied by the Company in writing expressly for inclusion therein. The Amended Offer Documents will comply as to form in all material respects with the provisions of the Exchange Act and any other applicable federal securities Laws.

## ARTICLE 6

### COVENANTS

6.1 Conduct of Business by the Company Pending the Closing. The Company covenants and agrees that, between the date of this Agreement and the Effective Time, except as set forth in Section 6.1 of the Company Disclosure Schedule or as permitted by any other provision of this Agreement, unless Parent will otherwise agree in writing (which agreement will not be unreasonably withheld, delayed or conditioned), the Company will, and will cause each Company Subsidiary to, conduct its operations in the ordinary course of business and use commercially reasonable efforts to preserve substantially intact its business organization and maintain existing relations and goodwill with customers, suppliers and employees in the ordinary course of business consistent with past practice. Without limiting the foregoing, and as an extension thereof, except as set forth in Section 6.1 of the Company Disclosure Schedule or as permitted by any other provision of this Agreement, the Company will not (unless required by applicable Law), and will not permit any Company Subsidiary to, between the date of this Agreement and the Effective Time, directly or indirectly, do, or agree to do, any of the following without the prior written consent of Parent (which consent will not be unreasonably withheld, delayed or conditioned):

(a) amend or otherwise change its certificate of incorporation or bylaws or equivalent organizational documents;

(b) issue, sell, pledge, dispose of, grant, transfer or encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, or encumbrance of, any shares of capital stock of, or other Equity Interests in, the Company or any Company Subsidiary of any class, or securities convertible into, or exchangeable or exercisable for, any shares of such capital stock or other Equity Interests, or any options, warrants or other rights of any kind to acquire any shares of such capital stock or other Equity Interests or such convertible or exchangeable securities, or any other ownership interest (including, without limitation, any such interest represented by Contract right), of the Company or any Company Subsidiary, other than the issuance of Shares (i) upon the vesting of Company RSUs or Company Restricted Shares, (ii) the exercise of Company Options outstanding as of the date hereof in accordance with their terms or (iii) in connection with the Top-Up Option;

(c) sell, pledge, dispose of, let lapse, abandon, assign, transfer, lease, license, guarantee or encumber any material property or assets of the Company or any Company Subsidiary (including any Registered Intellectual Property and unregistered Owned Intellectual Property), except (i) to the extent required pursuant to Contracts in effect prior to the date hereof, (ii) pursuant to the sale, purchase or licensing of inventory, raw materials, equipment, goods, or other supplies in the ordinary course of business consistent with past practice or (iii) for non-exclusive licenses in the ordinary course of business consistent with past practice with a fair market value not in excess of \$2,500,000 in the aggregate;

(d) declare, set aside, make or pay any dividend or other distribution (whether payable in cash, stock, property or a combination thereof) with respect to any of its capital stock (other than dividends paid by a wholly-owned Company Subsidiary to the Company or another wholly-owned Company Subsidiary) or enter into any agreement with respect to the voting or registration of its capital stock;

(e) reclassify, combine, split, subdivide or amend the terms of, or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock, other Equity Interests or any other securities, or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other securities, in each case other than in connection with the Top-Up Option;

(f) merge or consolidate the Company or any Company Subsidiary with any Person or adopt a plan of complete or partial liquidation or resolutions providing for a complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or any Company Subsidiary, or otherwise enter into any agreements imposing material restrictions on the assets, operations or businesses of the Company or any Company Subsidiary;

(g) enter into a new line of business (other than currently-projected extensions of existing product lines);

(h) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any Person or any division thereof or any assets, other than acquisitions of assets (including, without limitation, the purchase of inventory, raw materials, equipment, goods, or other supplies) in the ordinary course of business consistent with past practice and any other acquisitions for consideration that is individually not in excess of \$2,500,000, or in the aggregate not in excess of \$5,000,000;

(i) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise become responsible for the obligations of any Person (other than a wholly-owned Company Subsidiary) for borrowed money;

(j) make any loans, advances, guarantees or capital contributions to, or investments in, any other Person (other than any wholly-owned Company Subsidiary) in excess of \$2,500,000 in the aggregate;

(k) terminate, cancel or amend any Company Material Contract, or cancel, modify or waive any rights thereunder, or enter into or amend any Contract that, if existing on the date hereof, would be a Company Material Contract;

(l) make or authorize any capital expenditure in excess of the Company's capital expenditure budget as disclosed to Parent prior to the date hereof, other than capital expenditures that are not, in the aggregate, in excess of \$2,500,000;

(m) except to the extent required by (i) applicable Law, (ii) the existing terms of any Company Benefit Plan, (iii) contractual commitments or corporate policies with respect to severance or termination pay as in existence on the date hereof and listed on Section 6.1(m) of the Company Disclosure Schedule or (iv) as otherwise provided on Section 6.1(m) of the Company Disclosure Schedule: (A) increase in any manner the compensation, bonus or benefits payable or to become payable to its Service Providers (except for increases in the ordinary course of business consistent with past practice in base salaries or base wages of employees of the Company or any Company Subsidiary); (B) grant any additional rights to severance or termination pay to, or enter into any severance agreement with, any Service Provider, or establish, adopt, enter into or amend any Company Benefit Plan; (C) grant any new awards under any Company Benefit Plan, (D) amend or modify any outstanding award under any Company Benefit Plan, (E) take any action to amend, waive or accelerate the vesting criteria or vesting requirements of payment of any compensation or benefit under any Company Benefit Plan or remove any existing restrictions in any Company Benefit Plans or awards made thereunder, (F) take any action to accelerate the payment, or to fund or in any other way secure the payment, of compensation or benefits under any Company Benefit Plan, to the extent not already provided in any such Company Benefit Plan or (G) change any actuarial or other



assumptions used to calculate funding obligations with respect to any Company Benefit Plan or to change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or applicable laws;

45

(n) forgive any loans to Service Providers or any of their respective affiliates;

(o) make any material change in accounting policies, practices, principles, methods or procedures, other than as required by GAAP or by a Governmental Entity;

(p) encourage customers to make payments earlier than would otherwise reasonably be expected (based on past practice) to be made to the Company or the Company Subsidiaries, or agree to payment terms or conditions with suppliers that are not consistent in all material respects with past practice;

(q) compromise, settle or agree to settle any Proceeding (including any Proceeding relating to this Agreement or the transactions contemplated hereby) other than compromises, settlements or agreements in the ordinary course of business that involve only the payment of monetary damages not in excess of \$2,500,000 individually or \$5,000,000 in the aggregate, in any case without the imposition of equitable relief on, or the admission of wrongdoing by, the Company or any Company Subsidiary;

(r) (i) make, change, or rescind any material Tax election, (ii) file any material amended Tax Return of the Company or any of the Company Subsidiaries, (iii) or adopt or change any material method or period of Tax accounting, (iv) settle or compromise any material claim relating to Taxes; (v) surrender any material claim for a refund of Taxes; (vi) enter into any "closing agreement" as described in Section 7121 of the Code with respect to material Taxes; or (vii) consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course of business);

(s) write up, write down or write off the book value of any assets, except for depreciation and amortization and normal valuation adjustments to accounts receivable and inventory in accordance with GAAP consistently applied;

(t) pre-pay any long-term debt; or

(u) authorize or enter into any Contract or otherwise make any commitment, in each case to do any of the foregoing in clauses (a) through (t).

6.2 Access to Information; Confidentiality. Except as required pursuant to any confidentiality agreement or similar agreement or arrangement to which the Company or any Company Subsidiary is a party (which such Person will use commercially reasonable efforts to cause the counterparty thereto to waive), and except as would result in the loss or waiver of any attorney-client, work product or other applicable privilege, from the date of this Agreement to the Effective Time, the Company will, and will cause each Company Subsidiary and each of their respective directors, officers, employees, accountants, consultants, legal counsel, advisors, agents and other

46

representatives, (collectively, "Representatives" and, with respect to the Company and the Company Subsidiaries, the "Company Representatives") to: (i) provide to Parent and Merger Sub and their respective Representatives (the "Parent Representatives") reasonable access at reasonable times during normal operating hours upon prior notice to the officers, employees, agents, properties, offices and other facilities of such party and its Subsidiaries and to the books and records thereof (including Tax Returns) and (ii) furnish promptly such information concerning the business, properties, Contracts, assets, liabilities, personnel and other aspects of such party and its Subsidiaries as Parent or the Parent Representatives may reasonably request, provided that no investigation pursuant to this Section 6.2 shall affect or be deemed to modify any representation or warranty made by the Company herein or any of the conditions to the obligations of the parties hereto under this Agreement. The information referred to in the previous sentence shall be subject to the Confidentiality Agreement, dated November 16, 2012, by and between the Company and Parent (the "Confidentiality Agreement").

6.3 Non-Solicitation.

(a) Except as permitted by this Section 6.3, the Company will, and it will cause the No-Shop Representatives to:

(i) (A) immediately cease and cause to be terminated any solicitation, encouragement, activities, discussions or negotiations with any Persons that may be ongoing with respect to any Acquisition Proposal, (B) take the necessary steps to promptly inform such Persons of the obligations set forth in this Section 6.3, (C) immediately instruct each Person that has previously executed a confidentiality agreement in connection with such Person's consideration of an Acquisition Proposal to return to the Company or destroy any non-public information previously furnished to such Person or to any Person's Representatives by or on behalf of the Company or any Company Subsidiary, and (D) enforce (and not release, waive, amend or modify the provisions of) any confidentiality, non-solicit, non-use or standstill agreements entered into with any Person; and

(ii) not, directly or indirectly: (A) solicit, initiate, seek or knowingly encourage or facilitate or take any action to solicit, initiate or seek or knowingly encourage or facilitate any inquiry, expression of interest, proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal, (B) enter into, participate in, maintain or continue any discussions or negotiations relating to, any Acquisition Proposal with any Person other than Parent or Merger Sub, (C) furnish to any Person other than Parent or Merger Sub any information that the Company believes or should reasonably expect would be used in connection with, or for the purposes of formulating, any Acquisition Proposal, (D) enter into any agreement, letter of intent, memorandum of understanding, agreement in principle or Contract providing for or otherwise relating to any Acquisition Proposal (each, an "Alternative Acquisition Agreement") or (E) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Company. No later than 48 hours after the date hereof, the Company will notify Parent in writing of the identity of any Person that submitted an Acquisition Proposal within one year prior to the date hereof.

47

Without limiting the generality of the foregoing, the parties hereto acknowledge and hereby agree that any violation of the restrictions set forth in this Section 6.3 by any No-Shop Representative will be deemed to be a breach of this Section 6.3 by the Company.

(b) From and after the date of this Agreement, the Company will promptly (and in any event within 24 hours) provide Parent with: (i) a written description of any inquiry, expression of interest, proposal or offer relating to an Acquisition Proposal (including any modification thereto), or any request for information that would reasonably be expected to lead to an Acquisition Proposal, that is received by the Company or any Company Subsidiary or any No-Shop Representative from any Person (other than Parent or Merger Sub) including in such description the identity of the Person from which such inquiry, expression of interest, proposal, offer or request for information was received (the "Other Interested Party"); and (ii) a copy of each material written communication and a summary of each material oral communication transmitted by or on behalf of the Other Interested Party or any of its Representatives to the Company, any Company Subsidiary or any No-Shop Representative or transmitted on behalf of the Company, any Company Subsidiary or any No-Shop Representative to the Other Interested Party or any of its Representatives.

(c) Subject to Section 6.3(d), neither the Company Board nor any committee thereof will (i) withhold, withdraw or qualify (or modify in a manner adverse to Parent) (or publicly propose to withhold, withdraw, qualify or so modify) the approval, recommendation or declaration of advisability by the Company Board or any such committee of this Agreement, the Offer, the Merger or any of the other transactions contemplated hereby, (ii) adopt, approve, recommend, or otherwise declare advisable (or publicly propose to adopt, approve, recommend or otherwise declare advisable) the adoption of any Acquisition Proposal, (iii) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Company, or (iv) authorize, commit, resolve or agree to take any such actions (each such action set forth in clauses (i) through (iv) being referred to as a "Change of Board Recommendation").

(d) Notwithstanding anything to the contrary contained in this Article 6, if (i) the Company has received a bona fide written Acquisition Proposal from a third party that was not solicited, initiated, encouraged or facilitated in material breach of the provisions of this Agreement and that the Company Board determines in good faith, after consultation with outside counsel and its financial advisors, constitutes a Superior Proposal, and (ii) the Company Board determines in good faith, after consultation with its financial advisor and its outside counsel, that making a Change of Board Recommendation with respect to such Superior Proposal is necessary in order for the members of the Company Board to comply with their fiduciary duties under applicable Law, then the Company Board may, at any time prior to but not after the time at which the Stockholder Written Consent is executed and delivered to Parent in accordance with Section 6.4(a), (y) effect the type of Change of Board Recommendation provided for in Section 6.3(c)(i) with respect to such Superior Proposal and (z) terminate this Agreement to enter into an Alternative Acquisition Agreement with respect to such Superior Proposal.

48

(e) Nothing contained in this Agreement shall prohibit the Company (i) from taking and disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or complying with the provisions of Rule 14d-9 promulgated under the Exchange Act or (ii) making any disclosure to the stockholders of the Company that the Company Board determines to make in good faith (after consultation with its outside counsel) in order to fulfill its fiduciary duties under, or in order to otherwise comply with, applicable Law, in each case, so long as (A) any such disclosure includes the Company Board Recommendation, without any modification or qualification thereof and (B) does not contain either an express Change of Board Recommendation or any other statements by or on behalf of the Company Board as would reasonably be expected to have the same effect as a Change of Board Recommendation.

#### 6.4 Stockholder Written Consent; Preparing of Information Statement.

(a) Immediately after the execution of this Agreement and in lieu of calling a meeting of the Company's stockholders, the Company shall submit the form of Stockholder Written Consent attached hereto as Exhibit C (the "Stockholder Written Consent") to those of the Company's stockholders listed on Exhibit D. If the Stockholder Written Consent is duly executed by the Company's stockholders by the Required Vote and is delivered to the Company in accordance with Section 228 of the DGCL, then, as promptly as practicable thereafter, the Company shall deliver to Parent a copy (including by facsimile or other electronic image scan transmission) of the Stockholder Written Consent, certified as correct and complete by an executive officer of the Company.

(b) If the Stockholder Written Consent is not executed by the stockholders of the Company by the Required Vote, or a copy (including by facsimile or other electronic image scan transmission) thereof is not delivered by the Company to Parent pursuant to Section 6.4(a), in each case within 24 hours after the execution and delivery of this Agreement by the parties hereto, Parent shall have the right to terminate this Agreement as set forth in Section 8.1(c).

(c) As soon as reasonably practicable following the due execution and delivery of the Stockholder Written Consent by the Company's stockholders by the Required Vote, but in any event not later than the fifth Business Day following the date of this Agreement, the Company shall prepare and file with the SEC an information statement of the type contemplated by Rule 14c-2 under the Exchange Act related to the Merger and this Agreement (such information statement, including any amendment or supplement thereto, the "Information Statement"). The Information Statement shall also contain (i) the notice of action by written consent required by Section 228(e) of the DGCL and (ii) the notice of availability of appraisal rights and related disclosure required by Section 262 of the DGCL. Parent, Merger Sub and the Company will cooperate with each other in the preparation of the Information Statement. Without limiting the generality of the foregoing, each of Parent and Merger Sub will furnish to the Company the information relating to it required by the Exchange Act to be set forth in the Information Statement. The Company shall use its reasonable best efforts to resolve all SEC comments with respect to the Information Statement as promptly as reasonably

49

practicable after receipt thereof and to have the Information Statement cleared by the staff of the SEC as promptly as reasonably practicable after such filing. Each of Parent, Merger Sub and the Company agrees to correct any information provided by it for use in the Information Statement which shall have become false or misleading. The Company shall as soon as reasonably practicable notify Parent and Merger Sub of the receipt of any comments from the SEC with respect to the Information Statement and any request by the SEC for any amendment to the Information Statement or for additional information and shall provide Parent with copies of all such comments and correspondence. Prior to filing or mailing the Information Statement (or any amendment or supplement thereto) or responding to any comments of the SEC (or the staff of the SEC) with respect thereto, the Company shall provide Parent a reasonable opportunity to review and to propose comments on such document or response and shall, in good faith, consider and incorporate the reasonable comments of Parent. Promptly after the Information Statement has been cleared by the SEC or after 10 calendar days have passed since the date of filing of the preliminary Information Statement with the SEC without notice from the SEC of its intent to review the Information Statement, the Company shall promptly file with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act substantially in the form previously cleared or filed with the SEC, as the case may be, and mail a copy of the Information Statement to the Company's stockholders of record in accordance with Sections 228 and 262 of the DGCL.

#### 6.5 Appropriate Action; Consents; Filings.

(a) The Company and Parent will use their reasonable best efforts to (i) take, or cause to be taken, all appropriate action and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, (ii) obtain, or cause their affiliates to obtain, from any Governmental Entities any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained by Parent or the Company or any of their respective Subsidiaries, or to avoid any action or proceeding by any Governmental Entity (including, without limitation, those in connection with the HSR Act), in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated herein, including without limitation the Offer and the Merger and (iii) as promptly as reasonably practicable, and in any event within three Business Days after the date hereof, make, or cause their affiliates to make, all necessary filings, and thereafter make any other required submissions, and pay any fees due in connection therewith, with respect to this Agreement, the Offer and the Merger required under (A) the Exchange Act, and any other applicable federal or state securities Laws, (B) the HSR Act and (C) any other applicable Law; provided, that the Company and Parent will cooperate with each other in connection with (x) preparing and filing the Information Statement, (y) determining whether any action by or in respect of, or filing with, any Governmental Entity is required, in connection with the consummation of the Offer and the Merger and (z) seeking any such actions, consents, approvals or waivers or making any such filings. The Company and Parent will furnish, and cause their affiliates to furnish, to each other all information required for any application or other filing under the rules and regulations of any applicable Law in connection with the transactions contemplated by this Agreement.

50

(b) The Company and Parent will give (or will cause their respective affiliates to give) any notices to third parties, and use, and cause their respective affiliates to use, their commercially reasonable efforts to obtain any third-party consents, (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement (including delivering prepayment notices to lenders under the Company's senior credit agreement provided such notices are conditioned upon occurrence of the Offer Acceptance Time) or (ii) required to be disclosed in the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable.

(c) Without limiting the generality of anything contained in this Section 6.5, each party hereto will, and will cause their affiliates to: (i) give the other parties prompt notice of the making or commencement of any request, inquiry, investigation, action or legal proceeding by or before any Governmental Entity with respect to the Merger or any of the other transactions contemplated by this Agreement; (ii) keep the other parties

informed as to the status of any such request, inquiry, investigation, action or legal proceeding; and (iii) promptly inform the other parties of any communication to or from the Federal Trade Commission, the Department of Justice or any other Governmental Entity regarding the Merger. Each party hereto will consult and cooperate, and will cause its affiliates to consult and cooperate, with the other parties and will consider in good faith the views of the other parties in connection with any filing, analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with the Merger or any of the other transactions contemplated by this Agreement. In addition, except as may be prohibited by any Governmental Entity or by any Law, in connection with any such request, inquiry, investigation, action or legal proceeding, each party hereto will permit, and will cause its affiliates to permit, authorized Representatives of the other parties to be present at each meeting or conference relating to such request, inquiry, investigation, action or legal proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with such request, inquiry, investigation, action or legal proceeding.

(d) Each of Parent, Merger Sub and the Company will, and will cause its affiliates to, (i) cooperate and coordinate with each other in the making of any filings or submissions that are required to be made under any applicable Competition Laws or requested to be made by any Governmental Entity in connection with the transactions contemplated by this Agreement, (ii) supply each other or each other's outside counsel with any information that may be required or requested by any Governmental Entity in connection with such filings or submissions, (iii) supply any additional information that may be required or requested by the Federal Trade Commission, the Department of Justice or other Governmental Entities in which any such filings or submissions are made under any applicable Competition Laws as promptly as practicable, and (iv) use its reasonable best efforts to cause the expiration or termination of the applicable waiting periods under any applicable Competition Laws as soon as reasonably practicable. Without limiting the generality of the foregoing, Parent will not, and will not permit any

51

of its Subsidiaries to, enter into or publicly announce an agreement to form a joint venture, strategic alliance or strategic partnership or to acquire any assets, business or company if such agreement, individually or in the aggregate, would reasonably be expected to cause any of the conditions set forth in Article 7 not to be satisfied or would reasonably be expected to have the effect of preventing, materially impairing, materially delaying or otherwise materially and adversely affecting the consummation of the Merger.

(e) Nothing contained in this Section 6.5 will require, or be construed to require, Parent or any of its affiliates to proffer to, or agree to, sell, divest, lease, license, transfer, dispose of or otherwise encumber or hold separate, before or after the Effective Time, any of the assets, licenses, operations, rights, products or businesses held by any of them prior to the Effective Time, or any interest therein, or to agree to any material change (including through a licensing arrangement) or restriction on, or other impairment of Parent's or any of its affiliates' ability to own, manage or operate, any such assets, licenses, operations, rights, products or businesses, or any interest therein, or Parent's ability to vote, transfer, receive dividends or otherwise exercise full ownership rights with respect to the stock of the Surviving Corporation (any of the actions referred to in this Section 6.5(e), a "Non-Required Remedy").

(f) Notwithstanding anything to the contrary in this Agreement, nothing contained in this Agreement will give Parent or Merger Sub, directly or indirectly, the right to control or direct the operations of the Company prior to the Offer Acceptance Time. Prior to the Effective Time, the Company will exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

6.6 Certain Notices. From and after the date of this Agreement until the Effective Time, each party hereto will promptly notify the other party hereto of (a) the occurrence, or non-occurrence, of any event that would be likely to cause any condition to the obligations of any party to effect the Merger or any other transaction contemplated by this Agreement not to be satisfied or (b) the failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement which would reasonably be expected to result in any condition to the obligations of any party to effect the Merger or any other transaction contemplated by this Agreement not to be satisfied; provided, however, that the delivery of any notice pursuant to this Section 6.6 will not cure any breach of any representation, warranty, covenant or agreement contained in this Agreement or otherwise limit or affect the remedies available hereunder to the party receiving such notice.

6.7 Public Announcements. The Company, Parent and Merger Sub agree that the initial joint press release and other announcements concerning the execution and delivery of this Agreement will be substantially in the form provided to each other prior to the date hereof (with such changes as the parties may mutually agree). Each of the Company, Parent and Merger Sub agrees that no subsequent public release or announcement concerning the transactions contemplated hereby will be issued by any party without the prior written consent of the Company and Parent (which consent will

52

not be unreasonably withheld or delayed), except as such release or announcement may be required by applicable Law or the rules or regulations of any applicable United States securities exchange or regulatory or governmental body to which the relevant party or its affiliates is subject, in which case the party required to make the release or announcement will use its reasonable best efforts to allow each other party reasonable time to comment on such release or announcement in advance of such issuance.

## 6.8 Employee Benefit Matters.

(a) For a period of twelve months following the Effective Time, Parent will provide, or will cause to be provided, to those employees of the Company who continue to be employed by Parent and Parent Subsidiaries (individually, "Company Employee" and collectively, "Company Employees") annual base salary or base wages and short-term target cash incentive compensation opportunities that are no less favorable than the annual base salary or base wages and short-term target cash incentive compensation opportunities provided to such Company Employees immediately prior to the Effective Time. After the Effective Time, Parent will provide pension, health and welfare benefits to Company Employees who work more than 20 hours per week that are at least as favorable in the aggregate to those provided to similarly situated Parent employees; provided, that Parent may elect to continue Company Employees who work more than 20 hours per week in their existing Company Benefit Plans for a transition period.

(b) For purposes of vesting, eligibility to participate and levels of benefits (but not benefit accrual under any defined benefit plan or frozen benefit plan of Parent or vesting under any equity incentive plan) under the 401(k) plan, severance pay plan, vacation plan, short term disability plan, active employee medical, dental, vision and prescription drug plan, active employee life insurance plan and service award of Parent and the Parent Subsidiaries in which Company Employees first become eligible to participate after the Effective Time (the "New Plans"), Parent shall use reasonable best efforts to credit each Company Employee with his or her years of service with the Company before the Effective Time, to the same extent as such Company Employee was entitled, before the Effective Time, to credit for such service under any similar Company Benefit Plan in which such Company Employee participated or was eligible to participate immediately prior to the Effective Time; provided that the foregoing will not apply for purposes of qualifying for subsidized early retirement benefits, retiree medical benefits or life benefits, or to the extent that its application would result in a duplication of benefits with respect to the same period of service. In addition, Parent will use its commercially reasonable efforts to cause (i) each Company Employee to be immediately eligible to participate, without any waiting time, in any and all New Plans and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such Company Employee and his or her covered dependents, to the extent such conditions were inapplicable or waived under the comparable Company Benefit Plans in which such Company Employee participated immediately prior to the Effective Time.

53

(c) For the terms of the agreements or arrangements, the Company or the Surviving Corporation, as applicable, will, and Parent will cause the Surviving Corporation to, honor, in accordance with their terms, the employment, severance and change of control agreements and arrangements that are listed on Section 6.8(c) of the Company Disclosure Schedule.

(d) From and after the date of this Agreement until the Effective Time, prior to making any written or formal oral communications to Service Providers pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, each party will provide the other party hereto with a copy of the intended communication, the other party hereto shall have a reasonable period of time to review and comment on the communication, and Parent and the Company shall cooperate in providing any such mutually agreeable communication; provided, however, that the foregoing shall not apply to any individualized communications between Parent and a Company Employee regarding such Company Employee's service after the Closing or any individualized negotiations regarding offers of employment by Parent to such Company Employee for post-Closing service. Between the date of this Agreement and the Effective Time, the Company will use its reasonable best efforts to assist Parent in entering into Parent's standard documents relating to compensation and benefits in respect of periods after the Effective Time with each of the Company Employees.

(e) Nothing in this Agreement will require the continued employment of any Person, and except as expressly set forth in this Section 6.8 and as set forth on Section 6.8 of the Company Disclosure Schedule, no provision of this Agreement will prevent Parent or the Surviving Corporation from amending or terminating any Company Benefit Plan or benefit plans of any Parent or Parent Subsidiaries.

(f) The Company and Parent acknowledge and agree that all provisions contained in this Section 6.8 with respect to employees are included for the sole benefit of the respective parties and will not create any right in any other Person, including any employees, former employees, any participant in any Company Benefit Plan or any beneficiary thereof, nor will require the Company to continue or amend any particular benefit plan after the consummation of the transactions contemplated by this Agreement for any employee or former employee of the Company, and any such plan may be amended or terminated in accordance with its terms and Applicable Law.

## 6.9 Indemnification of Directors and Officers.

(a) For a period of six years from and after the Effective Time, Parent and the Surviving Corporation will indemnify and hold harmless all past and present directors and officers of the Company to the same extent such Persons are indemnified as of the date of this Agreement by the Company pursuant to applicable Law, the Company Certificate, the Company Bylaws and indemnification agreements in existence on the date of this Agreement with any directors and officers of the Company arising out of acts or omissions in their capacity as directors or officers of the Company or any Company Subsidiary occurring at or prior to the Effective Time. Parent and the Surviving

54

Corporation will advance expenses (including reasonable legal fees and expenses) incurred in the defense of any Proceedings with respect to the matters subject to indemnification pursuant to this Section 6.9(a) in accordance with the procedures set forth in the indemnification agreements in existence on the date of this Agreement.

(b) For a period of six years from and after the Effective Time, Parent will cause the certificate of incorporation and bylaws of the Surviving Corporation to contain provisions no less favorable with respect to exculpation and indemnification of directors and officers of the Company for periods at or prior to the Effective Time than are currently set forth in the Company Certificate. Parent will cause the indemnification agreements in existence on the date of this Agreement with any of the directors, officers or employees of the Company to continue in full force and effect in accordance with their terms following the Effective Time.

(c) For six years from and after the Effective Time, Parent will cause the Surviving Corporation to maintain for the benefit of the Company's directors and officers, as of the date of this Agreement and as of the Effective Time, an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time (the "D&O Insurance") that is substantially equivalent to and in any event not less favorable in the aggregate than the Company's existing policy (accurate and complete copies which have been previously provided to Parent) or, if substantially equivalent insurance coverage is unavailable, the best available coverage; provided, however, that the Surviving Corporation will not be required to pay an annual premium for the D&O Insurance in excess of 250% of the last annual premium paid prior to the date of this Agreement. The provisions of the immediately preceding sentence will be deemed to have been satisfied if prepaid policies have been obtained prior to the Effective Time, which policies provide such directors and officers with coverage for an aggregate period of six years with respect to claims arising from facts or events that occurred on or before the Effective Time, including, without limitation, in respect of the transactions contemplated by this Agreement. If such prepaid policies have been obtained prior to the Effective Time, Parent will cause the Surviving Corporation to maintain such policies in full force and effect, and continue to honor the obligations thereunder. If the Company elects to purchase such prepaid policies prior to the Effective Time, the Company (i) will not purchase policies with claims limits in excess of the Company's current policies or expend in connection therewith an amount in excess of 250% of the last annual premium paid prior to the date of this Agreement, and (ii) will consult and reasonably coordinate with Parent in connection with such purchase.

(d) In the event Parent or the Surviving Corporation (i) consolidates with or merges into any other Person and will not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then proper provision will be made so that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, will assume the obligations set forth in this Section 6.9.

(e) The obligations under this Section 6.9 will (i) continue, notwithstanding any six year limitation referred to above, until the final disposition of

55

any action, suit, proceeding or investigation brought or commenced during such six year period and (ii) not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 6.9 applies without the consent of such affected indemnitee (it being expressly agreed that the indemnitees to whom this Section 6.9 applies will be third party beneficiaries of this Section 6.9).

6.10 State Takeover Laws. If any "control share acquisition," "fair price," "business combination" or other anti-takeover Laws becomes or is deemed to be applicable to the Company, Parent, Merger Sub, Offer or the Merger, including the acquisition of Shares pursuant thereto, the Support Agreements or any other transaction contemplated by this Agreement, then the Company Board will take all action necessary to render such Law inapplicable to the foregoing.

6.11 Parent Agreement Concerning Merger Sub. Parent agrees to cause Merger Sub to comply with its obligations under this Agreement.

6.12 Section 16 Matters. Prior to the Effective Time, the Company Board, or an appropriate committee of non-employee directors thereof, will adopt a resolution consistent with the interpretive guidance of the SEC so that the disposition by any officer or director of the Company who is a covered Person of the Company for purposes of Section 16 of the Exchange Act ("Section 16") of Shares (including Company Restricted Shares), Company RSUs or Company Options pursuant to this Agreement, and the Merger will be an exempt transaction for purposes of Section 16.

6.13 Stock Exchange Delisting; Deregistration. The Company and Parent will cooperate and use their respective reasonable best efforts to cause the delisting of the shares of Company Common Stock from the NYSE and the deregistration of such shares as promptly as practicable following the Effective Time in compliance with applicable Law.

6.14 Stockholder Litigation. The Company will promptly provide Parent with any pleadings and correspondence relating to any Proceedings involving the Company or any of its officers or directors relating to this Agreement or the transactions contemplated hereby and will keep Parent reasonably informed regarding the status of any such Proceedings. The Company will consult and reasonably coordinate with Parent with respect to the defense or settlement of any such Proceeding, and no such settlement will be agreed to without the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned).

6.15 Domain Names. Prior to the Closing, the Company will use its commercially reasonable efforts to cause the Internet domain names set forth on Section 4.17(c)(16) of the Company Disclosure Schedule to be assigned to the Company or any Company Subsidiary.

6.16 Short Form Merger. Notwithstanding anything to the contrary contained in this Agreement, if Parent shall own by virtue of the Offer or otherwise at least 90% of the outstanding shares of each class of Company Common Stock (the "Short Form

56

Threshold"), the parties hereto shall take all necessary and appropriate action to cause the merger of Merger Sub and the Company to become effective as soon as reasonably practicable after such acquisition without a stockholders' meeting in accordance with Section 253 of the DGCL.

6.17 Guarantee of Guarantor.

(a) Guarantor is executing this Agreement to guarantee the performance by each of Parent and Merger Sub of its payment and performance obligations under this Agreement. Guarantor hereby guarantees unconditionally Parent and Merger Sub's payment obligations in and performance under this Agreement. This guarantee shall apply regardless of any amendments, variations, alterations, waivers or extensions to this Agreement whether or not Guarantor received notice of the same and Guarantor waives all need for notice of the same. This guarantee shall expire and be of no further force and effect as of 60 days following the Effective Time.

(b) Guarantor is a corporation, duly organized, validly existing and in good standing under the Laws of England and Wales and has all requisite corporate power and authority to own, lease and operate their respective properties and assets and to carry on their respective businesses as they are now being conducted. Guarantor indirectly owns all of the issued and outstanding capital stock of Parent.

(c) Guarantor has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Guarantor and the performance of Guarantor of its obligations hereunder have been duly authorized by all necessary corporate action, and no other corporate proceedings on the part of Guarantor and no stockholder votes are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Guarantor, and assuming due authorization, execution and delivery by the Company, constitutes the valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar Laws, now or hereafter in effect, affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Proceeding therefor may be brought.

## ARTICLE 7

### CONDITIONS TO CONSUMMATION OF THE MERGER

7.1 Conditions to Obligations of Each Party Under This Agreement. The respective obligations of each party to consummate the Merger will be subject to the satisfaction or written waiver at or prior to the Effective Time of each of the following conditions:

(a) (i) This Agreement shall have been adopted by the Company's stockholders by the Required Vote, and the Information Statement shall have been cleared by the SEC and been mailed to stockholders of the Company (in accordance with Regulation 14C of the Exchange Act) at least twenty calendar days prior to the Closing or (ii) all conditions of Section 253 of the DGCL required to be satisfied to effect the Merger as a Short Form Merger shall have been satisfied.

57

(b) No temporary restraining order, preliminary or permanent injunction or other Order issued by any court of competent jurisdiction or other Law preventing the consummation of the Merger shall be in effect.

(c) Merger Sub (or Parent on Merger Sub's behalf) shall have accepted for payment and paid for all of the shares of Company Common Stock validly tendered pursuant to the Offer and not withdrawn.

## ARTICLE 8

### TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. This Agreement may be terminated, and the Offer and the Merger contemplated hereby may be abandoned by action taken or authorized by the Board of Directors of the terminating party or parties, whether before or after adoption of this Agreement by the stockholders of the Company or of Merger Sub:

(a) By mutual written consent of Parent and the Company, by action of their respective Boards of Directors, at any time prior to the Effective Time;

(b) By either the Company or Parent, if any court of competent jurisdiction or other Governmental Entity has issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the Offer or the Merger or imposing a Non-Required Remedy, which Order or other action has become final and nonappealable (which Order the party seeking to terminate this Agreement has used its reasonable best efforts to resist, resolve or lift, as applicable, subject to the provisions of Section 6.5);

(c) By Parent, if, within 24 hours after execution and delivery of this Agreement by the parties hereto, (i) a duly executed Stockholder Written Consent evidencing adoption of this Agreement by the Company's stockholders by the Required Vote shall not have been delivered to the Company or (ii) the Company shall not have delivered to Parent a certified copy of such Stockholder Written Consent, in each case, pursuant to and in accordance with Section 6.4(a);

(d) By the Company, concurrently with the Company Board's causing the Company to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal in accordance with Section 6.3(d); provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available unless the Company shall have complied in all material respects with Section 6.3;

58

(e) By Parent or the Company, if the Offer Acceptance Time has not occurred on or before April 1, 2013 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(f) will not be available to any party whose breach of this Agreement has been the primary cause or primarily resulted in the failure of the Offer Acceptance Time to have occurred on or before the Outside Date;

(f) By Parent, if: (i) there is an Uncured Inaccuracy in any representation or warranty of the Company contained in this Agreement or a breach of any covenant of the Company contained in this Agreement, in any case, such that any condition to the Offer in Section 2(c) or Section 2(d) of Annex I is not satisfied, (ii) Parent has delivered to the Company written notice of such Uncured Inaccuracy or breach (a "Breach Notice") and (iii) either such Uncured Inaccuracy or breach is not capable of cure or, if curable, has not been cured in all material respects prior to the earlier of (x) the Outside Date and (y) the fifteenth calendar day after delivery of such Breach Notice to the Company;

(g) By the Company, if: (i) there is an Uncured Inaccuracy in any representation or warranty of Parent or Merger Sub contained in this Agreement or breach of any covenant of Parent or Merger Sub contained in this Agreement that has had or is reasonably likely to have, individually or in the aggregate, a Parent Material Adverse Effect, (ii) the Company has delivered to Parent written notice of such Uncured Inaccuracy or breach and (iii) either such Uncured Inaccuracy or breach is not capable of cure or, if curable, has not been cured in all material respects prior to the earlier of (x) the Outside Date and (y) the fifteenth calendar day after delivery of such written notice to Parent.

## 8.2 Effect of Termination.

(a) In the event of termination of this Agreement by either the Company or Parent as provided in Section 8.1, this Agreement will forthwith become void and of no effect, and there will be no liability or obligation on the part of Parent, Merger Sub or the Company or their respective Subsidiaries, officers or directors except (i) with respect to the last sentence of Section 6.2, this Section 8.2 and Article 9 and (ii) with respect to any liabilities or damages incurred or suffered by a party as a result of the willful and material breach by another party of any of its representations, warranties, covenants or other agreements set forth in this Agreement.

(b) In the event that this Agreement is terminated pursuant to Section 8.1(d), then the Company will pay to Parent concurrent with such termination a termination fee of \$22 million (the "Breakup Fee").

(c) In the event that this Agreement is terminated pursuant to Section 8.1(e) or Section 8.1(f), and prior to the date of termination of this Agreement an Acquisition Proposal shall have been made known to the Company Board and is not definitively withdrawn prior to the thirtieth calendar day prior to the date of termination (with respect to any termination pursuant to Section 8.1(e)) or the fifth calendar day prior

59

to the delivery of the applicable Breach Notice (with respect to any termination pursuant to Section 8.1(f)), and on or prior to the 12-month anniversary of the termination of this Agreement, (x) the Company enters into a definitive written agreement providing for the consummation of any Acquisition Proposal or (y) any Acquisition Proposal is consummated, then on the earlier to occur of the event described in clause (x) of this sentence and the event described in clause (y) of this sentence, the Company will pay to Parent the Breakup Fee (provided, that for purposes of this Section 8.2(c), the term "Acquisition Proposal" will have the meaning assigned to such term in Section 9.4, except that the references to "20%" will be deemed to be references to "a majority").

(d) In the event that this Agreement is terminated pursuant to Section 8.1(c), and on or prior to the 12-month anniversary of the termination of this Agreement, (x) the Company enters into a definitive written agreement providing for the consummation of any Acquisition Proposal or (y) any Acquisition Proposal is consummated, then on the earlier to occur of (x) and (y), the Company will pay to Parent the Breakup Fee (provided that, for purposes of this Section 8.2(d), the term "Acquisition Proposal" will have the meaning assigned to such term in Section 9.4, except that the references to "20%" will be deemed to be references to "a majority").



(e) All payments under this Section 8.2 will be made by wire transfer of immediately available funds to an account designated in writing by Parent. Each of the Company, Parent and Merger Sub acknowledges that (i) the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement and (ii) without these agreements, Parent, Merger Sub and the Company would not enter into this Agreement.

8.3 Amendment. This Agreement may be amended by the Company, Parent and Merger Sub by action taken by or on behalf of their respective Boards of Directors at any time prior to the Effective Time, whether before or after adoption of this Agreement by the stockholders of the Company or of Merger Sub; provided, however, that, after adoption of this Agreement by such stockholders, no amendment may be made which, by Law or in accordance with the rules of any relevant stock exchange, requires further approval by such stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

8.4 Waiver. At any time prior to the Effective Time, Parent and Merger Sub, on the one hand, and the Company, on the other hand, may (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any Uncured Inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto and (iii) waive compliance by the other with any of the agreements or conditions contained herein. Any such extension or waiver will be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

60

## ARTICLE 9

### GENERAL PROVISIONS

9.1 Non-Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement will survive the Effective Time. This Section 9.1 will not limit any covenant or agreement of the parties hereto which by its terms contemplates performance after the Effective Time.

9.2 Fees and Expenses. Subject to Section 8.2, all Expenses incurred by the parties hereto will be borne solely and entirely by the party which has incurred the same.

9.3 Notices. Any notices or other communications required or permitted under, or otherwise given in connection with, this Agreement will be in writing and will be deemed to have been duly given (i) when delivered or sent if delivered in Person or sent by facsimile transmission (provided confirmation of facsimile transmission is obtained) or (ii) on the next Business Day if transmitted by international overnight courier, in each case as follows:

If to Parent or Merger Sub, addressed to it at:

Reckitt Benckiser LLC

Morris Corporate Center IV

399 Interpace Parkway

P.O. Box 225

Parsippany, NJ 07054-0225

Attention: Kelly Slavitt

Facsimile No.: (973) 404-5676

with a copy to (for information purposes only):

Paul, Weiss, Rifkind, Wharton & Garrison, LLP

1285 Avenue of the Americas

New York, NY 10019

Attention: Toby S. Myerson

Kelley D. Parker

Steven J. Williams

Facsimile No.: (212) 757-3990

If to the Company, addressed to it at:

Schiff Nutrition International, Inc.

1201 Park Avenue, Suite 101

Emeryville, CA 94608

Attention: General Counsel

Facsimile No.: (510) 922-1271

61

with a copy to (for information purposes only):

Latham & Watkins LLP

140 Scott Drive

Menlo Park, California 94062

Attention: Tad Freese

Jamie Leigh

Facsimile No.: (650) 463-2600

9.4 Certain Definitions. For purposes of this Agreement, the term:

"Acquisition Proposal" means any offer or proposal concerning any (a) merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction involving the Company or any Company Subsidiary, (b) sale, lease or other disposition of assets of the Company (including Equity Interests of a Company Subsidiary) or any Company Subsidiary representing 20% or more of the consolidated assets of the Company and the Company Subsidiaries, (c) issuance or sale by the Company of Equity Interests representing 20% or more of the voting power (or 20% or more of the aggregate number of all outstanding Shares) of the Company, (d) transaction in which any Person will acquire beneficial ownership or the right to acquire beneficial ownership or any group has been formed which beneficially owns or has the right to acquire beneficial ownership of, Equity Interests representing 20% or more of the voting power (or 20% or more of the aggregate number of all outstanding Shares) of the Company or (e) any combination of the foregoing (in each case, other than the Merger).

"affiliate" means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first-mentioned Person.

"beneficial ownership" (and related terms such as "beneficially owned" or "beneficial owner") has the meaning set forth in Rule 13d-3 under the Exchange Act.

"Blue Sky Laws" means any state securities, "blue sky" or takeover law.

"Business" means the business conducted by the Company or the Company Subsidiaries in the design, development, research, use, manufacture or sale of the Company Products.

"Business Day" means any day other than Saturday, Sunday and any day on which commercial banks in the City of London, England or in the County of New York, New York are required or permitted by Law to close.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

"Code" means the Internal Revenue Code of 1986.

62

“Company Benefit Plans” means all “employee benefit plans” as defined in Section 3(3) of ERISA and all bonus, stock option, stock purchase, stock appreciation rights, restricted stock, stock-based or other equity-based, incentive, profit-sharing, deferred compensation, vacation, insurance, medical, welfare, fringe, retirement, retiree medical or life insurance, supplemental retirement, severance, termination or change in control or other benefit plans, programs or arrangements, and all employment, consulting, termination, severance or other contracts or agreements, whether or not in writing and whether or not funded, to which the Company or any Company Subsidiary is a party, with respect to which the Company or any Company Subsidiary has any obligation or which are maintained, contributed to or sponsored by the Company or any Company Subsidiary for the benefit of any current or former employee, officer, director or consultant of the Company or any Company Subsidiary.

“Company Material Adverse Effect” means any change, event, development, condition, occurrence or effect that: (i) is, or would reasonably be expected to be, materially adverse to the business, financial condition, assets, liabilities or results of operations of the Company and the Company Subsidiaries, taken as a whole; provided, however, that none of the following will be deemed in themselves, either alone or in combination, to constitute, and that none of the following will be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: (a) any change generally affecting the economy, financial markets or political, economic or regulatory conditions in the United States; (b) general financial, credit or capital market conditions, including interest rates or exchange rates, or any changes therein; (c) any change that generally affects the nutritional supplement industry in the United States to the extent the Company and the Company Subsidiaries are not materially and disproportionately affected thereby; (d) any change proximately caused by the negotiation, execution, announcement, pendency or pursuit of the transactions contemplated hereby, including the Merger, including any litigation resulting therefrom (provided, however, that the exception in this clause (d) shall not apply to references to “Company Material Adverse Effect” in the representations and warranties set forth in Section 4.4 and Section 4.5); (e) any change proximately caused by the Company’s compliance with the terms of this Agreement, or action taken, or failure to act, to which Parent has consented; (f) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or other international or national calamity or any material worsening of such conditions threatened or existing as of the date of this Agreement to the extent the Company and the Company Subsidiaries are not materially and disproportionately affected thereby; (g) changes in Laws after the date hereof, to the extent the Company and the Company Subsidiaries are not materially and disproportionately affected thereby; (h) changes in GAAP after the date hereof, to the extent the Company and the Company Subsidiaries are not materially and disproportionately affected thereby; (i) any failure by the Company to meet any published or internally prepared estimates of revenues, earnings or other economic performance for any period ending on or after the date of this Agreement (it being understood that the facts and circumstances giving rise to such failure may be deemed to constitute, and may be taken into account in determining whether there has been, a Company Material Adverse Effect to the extent that such facts and circumstances are not otherwise described in clauses (a)-(h) or (j) of the definition); or (j) a decline in

63

the price of the Company Common Stock on the NYSE or any other market in which such securities are quoted for purchase and sale (it being understood that the facts and circumstances giving rise to such decline may be deemed to constitute, and may be taken into account in determining whether there has been, a Company Material Adverse Effect to the extent that such facts and circumstances are not otherwise described in clauses (a)-(i) of the definition); or (ii) prevents or materially delays, or would reasonably be expected to prevent or materially delay, consummation of the Offer, the Merger or performance by the Company of any of its material obligations under this Agreement.

“Company Product” means each of MegaRed®, Move Free®, Airborne®, Tiger’s Milk®, Sustenex®, Digestive Advantage®, Schiff® Vitamins and any other product manufactured or marketed by the Company or any Company Subsidiary.

“Competition Law” means any merger control law or regulation that is applicable to the transactions contemplated by this Agreement.

“Contracts” means any legally binding contract, agreement, indenture, note, bond, loan, license, instrument, lease or any other legally binding commitment, plan or arrangement, whether oral or written.

“control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock or as trustee or executor, by Contract or credit arrangement or otherwise.

“Environmental Laws” means any and all international, federal, state, local or foreign Laws, statutes, ordinances, regulations, treaties, policies, guidance, rules, judgments, orders, writs, court decisions or rule of common law, stipulations, injunctions, consent decrees, permits, restrictions and licenses, which (a) regulate or relate to the protection or clean-up of the environment; the use, treatment, storage, transportation, handling, disposal or release of Hazardous Substances, the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources; or the health and safety of Persons or property, including protection of the health and safety of employees; or (b) impose liability or responsibility with respect to any of the foregoing, including CERCLA, or any other law of similar effect.

“Environmental Permits” means any permit, approval, identification number, license and other authorization required under any applicable Environmental Law.

“Equity Interest” means any share, capital stock, partnership, member or similar interest in any Person, and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable thereto or therefor.

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

"ERISA Affiliate" of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

64

"Expenses" includes all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, financing sources, experts and consultants to a party hereto and its affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including the preparation, printing, filing and mailing of the Information Statement and any solicitation of stockholder approvals and all other matters related to the transactions contemplated by this Agreement.

"GAAP" means generally accepted accounting principles as applied in the United States.

"Governmental Entity" means any nation, federal, state, county municipal, local or foreign government, or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of or pertaining to government, including any court thereof.

"group" has the meaning ascribed to in the Exchange Act, except where the context otherwise requires.

"Hazardous Substances" means any pollutant, chemical, substance, and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, or any infectious agent or biological material, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Laws, including without limitation, any quantity of asbestos in any form, urea formaldehyde, PCBs, radon gas, mold, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products or derivatives.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Intellectual Property Rights" means all (a) U.S. and foreign patents and patent applications and disclosures relating thereto (and any patents that issue as a result of those patent applications), and any renewals, reissues, reexaminations, extensions, continuations, continuations-in-part, divisions and substitutions relating to any of the patents and patent applications, as well as all related foreign patent and patent applications that are counterparts to such patents and patent applications, (b) U.S. and foreign trademarks, service marks, trade dress, logos, trade names and corporate names, whether registered or unregistered, and the goodwill associated therewith, together with any registrations and applications for registration thereof, (c) U.S. and foreign copyrights and rights under copyrights, whether registered or unregistered, including moral rights, and any registrations and applications for registration thereof, (d) rights in databases and data collections (including knowledge databases, customer lists and customer databases) under the laws of the United States or any other jurisdiction, whether registered or unregistered, and any applications for registration therefor, (e) Trade Secrets, (f) URL and Internet domain name registrations, (g) inventions (whether or not patentable) and improvements thereto, (h) all claims and causes of action arising out of or related to

65

infringement or misappropriation of any of the foregoing and (i) other proprietary, industrial or intellectual property rights now known or hereafter recognized in any jurisdiction worldwide.

"IRS" means the United States Internal Revenue Service.

"knowledge" of a Person means the actual knowledge of the Chief Executive Officer, the Chief Financial Officer, the Vice President and Controller or the General Counsel of the Person; provided, that, for purposes of Section 4.26 hereof, the knowledge of the Company shall also include the actual knowledge of the Chief Medical Officer or the Senior Vice President – Operations of the Company.

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction, decree or arbitration award or finding.

"Lien" means any lien, mortgage, pledge, conditional or installment sale agreement, encumbrance, covenant, condition, restriction, charge, option, lease, license, right of first refusal, easement, security interest, deed of trust, right-of-way, encroachment, community property interest or other claim or restriction of any nature, whether voluntarily incurred or arising by operation of Law (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"No-Shop Representatives" means, collectively, (a) the Company's Representatives, (b) the Company Subsidiaries and each of their respective Representatives, (c) TPG Capital, L.P., its affiliates, and each of their respective Representatives and (d) Weider Health and Fitness, its

affiliates, and each of their respective Representatives.

“Offer Acceptance Time” means the time at which Merger Sub accepts, for the first time, for payment the Shares validly tendered and not properly withdrawn pursuant to the Offer and satisfying the Minimum Condition.

“Parent Material Adverse Effect” means any change, event, development, condition, occurrence or effect that prevents or materially delays, or would reasonably be expected to prevent or materially delay, consummation of the Offer, the Merger or performance by Parent or Merger Sub of any of their material obligations under this Agreement.

“Permitted Liens” means (a) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings, (b) Liens in favor of vendors, carriers, warehousemen, repairmen, mechanics, workmen, materialmen, construction or similar liens or other encumbrances arising by operation of Law and (c) Liens that do not materially detract from the value or materially interfere with any present or intended use of such property or assets.

66

“Person” means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d) of the Exchange Act).

“Securities Act” means the Securities Act of 1933.

“Short Form Merger” means a short form merger pursuant to Section 253 of the DGCL.

“Software” means computer software, programs and databases in any form, including Internet web sites, web content and links, source code, executable code, tools, menus, and all versions, updates, corrections, enhancements and modifications thereof, and all related documentation related thereto.

“Subsidiary” of Parent, the Company or any other Person means any corporation, partnership, joint venture or other legal entity of which Parent, the Company or such other Person, as the case may be (either alone or through or together with any other Subsidiary), owns, directly or indirectly, a majority of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation, partnership, joint venture or other legal entity.

“Specified Governmental Entity” means any Governmental Entity in the United States or any State thereof.

“Superior Proposal” means a written and bona fide Acquisition Proposal (except the references therein to “20%” will be replaced by “50.1%” and the parenthetical phrases in clauses (c) and (d) therein will, in each instance, be replaced by the phrase “and 50.1% or more of each class of equity securities”) made by a third party that the Company Board has determined in its good faith judgment, after consultation with its outside legal counsel and with its financial advisors, is reasonably likely to be consummated in accordance with its terms, taking into account all legal, financial (including the availability of committed financing) and regulatory aspects of the proposal and the Person making the proposal and would, if consummated, result in a transaction that is more favorable to the Company’s stockholders, from a financial point of view, than the Merger (after giving effect to all adjustments to the terms thereof which may be irrevocably offered by Parent).

“Taxes” means any and all taxes (together with any and all interest, penalties and additions thereto) imposed by any Governmental Entity, including income, franchise, windfall or other profits, gross receipts, property, sales, use, net worth, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, excise, withholding, ad valorem, stamp, transfer, value-added and gains tax.

“Tax Return” means any report, return (including information return), claim for refund or declaration filed with any Governmental Entity with respect to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

67

“Technology” means tangible embodiments of Intellectual Property Rights, whether in electronic, written or other media, including Software, technical documentation, specifications, designs, build instructions, test reports, schematics, algorithms, formulae, test vectors, databases, lab notebooks, processes, prototypes, materials, samples, studies, or other know-how and other works of authorship.

“Trade Secrets” means trade secrets and other rights in know-how and confidential or proprietary information (including any business plans, designs, technical data, customer data, financial information, pricing and cost information, bills of material, or other similar information).

“Treasury Regulations” means regulations promulgated by the United States Department of the Treasury under the Code.

“Uncured Inaccuracy” with respect to a representation or warranty of a party to the Agreement as of a particular date will be deemed to exist only if such representation or warranty is inaccurate as of such date as if such representation or warranty were made as of such date, and the

inaccuracy in such representation or warranty has not been cured in all material respects since such date; provided, however, that if such representation or warranty by its terms speaks as of the date of the Agreement or as of another particular date, then there will not be deemed to be an Uncured Inaccuracy in such representation or warranty unless such representation or warranty was inaccurate as of the date of the Agreement or such other particular date, respectively, and the inaccuracy in such representation or warranty has not been cured in all material respects since such date.

9.5 Terms Defined Elsewhere. The following terms are defined elsewhere in this Agreement, as indicated below:

Term

Section

Agreement Preamble

Alternative Acquisition Agreement 6.3(a)(ii)

Amended Offer Documents 1.1(b)

Bayer Merger Agreement Recitals

Book-Entry Shares 1.4(d)

Breach Notice 8.1(f)

Breakup Fee 8.2(b)

Certificate of Merger 2.2

Certificates 3.2(b)

Chancery Court 9.12(b)

Change of Board Recommendation 6.3(d)

Class A Common Stock Recitals

Class B Common Stock Recitals

Closing 2.2

Closing Date 2.2

Company Preamble

Company Board Recitals

Company Board Recommendation Recitals

68

Term

Section

Company Bylaws 4.1(c)

Company Certificate 4.1(c)

Company Common Stock Recitals

Company Disclosure Schedule 4

Company Employee 6.8(a)

Company Financial Statements 4.7(a)

Company Material Contract 4.14(a)

Company Options 3.4(a)

Company Permits 4.6(a)

Company Preferred Stock 4.2(a)

Company Representatives 6.2

Company Restricted Shares 3.4(c)

Company RSUs 3.4(b)

Company SEC Documents 4.7(a)

Company Stock Option Plans 3.4(a)

Company Stockholder Approval 4.23

Company Subsidiary 4.1(b)

Confidentiality Agreement 6.2

Continuing Directors 1.3(b)

D&O Agreement Recitals

D&O Insurance 6.9(c)

DGCL Recitals

Dissenting Shares 3.3

Effective Time 2.2

Exchange Act 4.5

Expiration Date 1.1(d)

Fairness Opinion 4.22

FDA 4.26(a)

FDCA 4.26(a)

Guarantor Preamble

Houlihan 4.22

Information Statement 6.4(c)

Initial Expiration Date 1.1(d)

Insurance Policies 4.19

Leased Real Property 4.21(a)

Licensed Intellectual Property 4.17(a)

Material Intellectual Property 4.17(b)

Merger Preamble

Merger Consideration 3.1(a)

Merger Sub Preamble

Merger Sub Common Stock 3.1(c)

New Plans 6.8(b)

Non-Required Remedy 6.5(e)

NYSE 1.1(e)(ii)

Offer Recitals

69

Term

Section

Offer Conditions 1.1(b)

Offer Documents 1.1(a)

Offer Price Recitals

Offer to Purchase 1.1(b)

Option Payments 3.4(a)

Order 4.15(b)

Other Interested Party 6.3(b)

Outside Date 8.1(e)

Owned Intellectual Property 4.17(a)

Parent Preamble

Parent Disclosure Schedule 5

Parent Representatives 6.2

Parent Subsidiary 5.3

Paying Agent 3.2(a)

Proceeding 4.15(a)

Registered Intellectual Property 4.17(a)

Representatives 6.2

Required Vote 4.23

RSU Payments 3.4(b)

Sarbanes-Oxley Act 4.7(a)

Schedule 14D-9 1.2(a)



Schedule TO 1.1(a)

SEC 4.5

Section 16 6.12

Service Providers 4.12(a)

Shares Recitals

Short Form Threshold 6.16

Stockholder Written Consent 6.2(b)

Subsequent Offering Period 1.1(f)

Surviving Corporation 2.1(a)

Tender and Support Agreements Recitals

Top-Up Option 1.4(a)

Top-Up Option Shares 1.4(a)

9.6 Headings. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

9.7 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by reason of any rule of Law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

70

9.8 Entire Agreement. This Agreement (together with the Exhibits, Parent Disclosure Schedules and Company Disclosure Schedules and the other documents delivered pursuant hereto) and the Confidentiality Agreement constitute the entire agreement of the parties hereto and supersede all prior agreements and undertakings, both written and oral, among the parties hereto, or any of them, with respect to the subject matter hereof and.

9.9 No Third Party Beneficiaries. Except as provided in Section 6.9 only, the parties hereto hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other parties hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including, without limitation, the right to rely upon the representations and warranties set forth herein. The parties hereto further agree that the rights of third party beneficiaries under Section 6.9 shall not arise unless and until the Effective Time occurs. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto.

9.10 Assignment. The Agreement will not be assigned by any party hereto by operation of Law or otherwise without the prior written consent of the other parties hereto, provided, that Parent or Merger Sub may assign any of their respective rights and obligations to any direct or indirect Parent Subsidiary prior to the mailing of the Information Statement, but no such assignment will relieve Parent or Merger Sub, as the case may be, of its obligations hereunder.

9.11 Mutual Drafting; Interpretation. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision. For purposes of this Agreement, whenever the context requires: the singular number will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include masculine and feminine genders. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." Except as otherwise indicated, all references in this Agreement to "Sections," "Exhibits," "Annexes" and "Schedules" are intended to refer to Sections of this Agreement and Exhibits, Annexes and Schedules to this Agreement. All references in this Agreement to "\$" are intended to refer to U.S. dollars. Except as otherwise expressly provided herein, any Law defined or referred to herein will refer to such Law as amended and the rules and regulations promulgated thereunder. Unless otherwise specifically provided for herein, the term "or" will not be deemed to be exclusive.

## 9.12 Governing Law; Consent to Jurisdiction; Waiver of Trial by Jury.

(a) This Agreement will be governed by, and construed in accordance with, the Laws of the State of Delaware, without regard to laws that may be applicable under conflicts of laws principles (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (the "Chancery Court"), or, if the Chancery Court lacks subject matter jurisdiction of the action or proceeding, any Federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereto hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such court, (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court and (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.3. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.12(c).

9.13 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement.

9.14 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto will be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court referred to in Section 9.12(b), this being in addition to any other remedy to which they are entitled at Law or in equity.

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

RECKITT BENCKISER LLC

By:

/s/ Frederic Larmuseau

Name: Frederic Larmuseau

Title: Senior Vice President and Manager

ASCOT ACQUISITION CORP.

By:

/s/ Frederic Larmuseau

Name: Frederic Larmuseau

Title: President

RECKITT BENCKISER GROUP PLC, solely for purposes of Section 6.17

By:

/s/ Rakesh Kapoor

Name: Rakesh Kapoor

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

SCHIFF NUTRITION INTERNATIONAL, INC.

By:

/s/ Tarang P. Amin

Name: Tarang P. Amin

Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

ANNEX I

#### CONDITIONS OF THE OFFER

Notwithstanding any other terms or provisions of the Offer or the Merger Agreement, Merger Sub shall not be obligated to accept for payment or, subject to the rules and regulations of the SEC (including Rule 14e-1(c) promulgated under the Exchange Act), pay for, and (subject to any such rules and regulations) may, to the extent expressly permitted by the Merger Agreement, delay the acceptance for payment of, or payment for, any validly tendered shares of Company Common Stock (the "Shares") pursuant to the Offer (and not theretofore accepted for payment or paid for), if:

(1) immediately prior to the expiration of the Offer (as extended in accordance with the Merger Agreement), there shall not have been validly tendered and not validly withdrawn that number of Shares that when added to the Shares then beneficially owned by Parent and its Subsidiaries would represent, after giving effect to the Offer Acceptance Time and the conversion of shares of Class B Common Stock into shares of Class A Common Stock, one Share more than fifty percent (50%) of the total outstanding voting power of the Shares; provided, that such calculation shall be made on a fully diluted basis so that all Shares issuable upon the exercise, conversion or exchange of any options, rights and securities exercisable or convertible into Shares then outstanding (other than any Shares issuable pursuant to the Top-Up Option and any Shares issuable upon the exercise of any Company Option held by a director or officer of the Company who has executed a D&O Agreement) regardless of whether or not then vested are treated as outstanding for purposes of such calculation (such condition in this clause (1) being, the "Minimum Condition"); or

(2) any of the following events or conditions shall exist as of the applicable scheduled Expiration Date of the Offer:

(a) The waiting period applicable to the consummation of the Offer under the HSR Act shall have failed to expire or shall have failed to have been earlier terminated.

(b) (i) A Specified Governmental Entity shall have issued an Order or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Offer or the Merger or imposing a Non-Required Remedy, (ii) there shall be pending, or threatened in writing, any Proceeding by any Specified Governmental Entity seeking to restrain or prohibit the consummation of the Offer or the Merger or to impose a Non-Required Remedy, other than in connection with any Proceeding involving the Company or any of its officers or directors relating to this Agreement or the transactions contemplated hereby which is brought by or on behalf of stockholders of the Company, whether as an individual or a purported class or derivative action; and (iii) there shall be a statute, rule, regulation, judgment, order or injunction enacted, entered, enforced, promulgated or which is deemed applicable pursuant to an authoritative interpretation by or on behalf of a Governmental Entity to the

Offer or the Merger, other than the application to the Offer or the Merger of applicable waiting periods under the HSR Act,

Annex I – Page 1

that has the effect of making the Offer or the Merger illegal or which has the effect of prohibiting or otherwise preventing the consummation of the Offer or the Merger or imposing a Non-Required Remedy.

(c) (i) Any representation or warranty of the Company contained in Section 4.2(a) (third sentence only), Section 4.2(d), Section 4.3 and Section 4.11(b) of this Agreement shall not be true and correct in all respects, as of the date of this Agreement and as of the Expiration Date with the same force and effect as if made on and as of such date, except for any representation and warranty that is expressly made as of a specific date or time (in which case not true and correct in all respects as of such date or time), (ii) any representation or warranty of the Company contained in (A) the first and fourth sentences of Section 4.2(a), (B) the third sentence of Section 4.2(b) or (C) any of the second and third sentences of Section 4.2(c) of this Agreement shall not be true and correct in all material respects, as of the date of this Agreement and as of the Expiration Date with the same force and effect as if made on and as of such date, except for any representation and warranty that is expressly made as of a specific date or time (in which case not true and correct in all material respects as of such date or time), or (iii) any other representations and warranties of the Company contained in the Agreement (without giving effect to any references to any Company Material Adverse Effect or materiality qualifications and other qualifications based upon the concept of materiality or similar phrases contained therein) shall not be true and correct in all respects as of the date of this Agreement and as of the Expiration Date with the same force and effect as if made on and as of such date, except for any representation and warranty that is expressly made as of a specific date or time (in which case not true and correct in all respects as of such date or time), except as has not had and would not reasonably be expected to have, individually or in the aggregate with all other such failures to be true or correct, a Company Material Adverse Effect.

(d) The Company shall have failed to perform and comply in all material respects with the agreements and covenants to be performed or complied with by it under this Agreement and any such breach or failure to do so shall not have been cured.

(e) Since the date of this Agreement, there shall have occurred, arisen or come into existence any fact, change, event, development or circumstance, or any worsening thereof, which has had a Company Material Adverse Effect.

(f) Parent shall not have received a certificate of the Company, executed by an executive officer of the Company, dated as of the Expiration Date, certifying that the conditions set forth in subsections 2(c), 2(d) and 2(e) of this Annex I have been satisfied.

(g) The Merger Agreement shall have been terminated in accordance with its terms.

The foregoing conditions are for the sole benefit of Parent and Merger Sub and may be waived by Parent and Merger Sub, in whole or in part at any time and from time to time, in the sole discretion of Parent and Merger Sub prior to the expiration of the Offer, and

Annex I – Page 2

all conditions (except, subject to Section 1.1(c)(iii)(F), for the Minimum Condition) may be waived by Parent or Merger Sub in their sole discretion in whole or in part at any applicable time or from time to time, in each case subject to the terms and conditions of the Merger Agreement and the applicable rules and regulations of the SEC. The failure by Parent or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Capitalized terms used in this Annex I and not otherwise defined shall have the respective meanings assigned thereto in the Agreement to which this Annex I is attached (the "Merger Agreement").

Annex I – Page 3

EXHIBIT A

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

SCHIFF NUTRITION INTERNATIONAL, INC.

FIRST. The name of the corporation is Schiff Nutrition International, Inc. (the "Corporation").

SECOND. The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH. The total number of shares which the Corporation shall have authority to issue is 1,000 shares of Common Stock, par value \$0.01 per share.

FIFTH. The board of directors of the Corporation is expressly authorized to adopt, amend or repeal bylaws of the Corporation.

SIXTH. Elections of directors need not be by written ballot except and to the extent provided in the bylaws of the Corporation.

SEVENTH. The number of directors of the corporation shall be fixed by, or in the manner provided in, the bylaws of the Corporation.

EIGHTH. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation, including but not limited to the election of directors, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitles to vote thereon were present and voted.

NINTH. The Corporation shall, to the fullest extent permitted by Delaware law, indemnify any person (the "Indemnitee") who is or was involved in any manner (including, without limitation, as a party or a witness) in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action, suit or proceeding brought by or in the right of the Corporation to procure a judgment in its favor) (a "Proceeding") by reason of the fact that the Indemnitee is or was a director or

officer of the Corporation, or is or was serving another entity in such capacity at the request of the Corporation, against all expenses and liabilities actually and reasonably incurred by the Indemnitee in connection with the defense or settlement of such Proceeding (including attorneys' fees).

TENTH. To the fullest extent permitted by the DGCL, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director.

2

EXHIBIT B

SECOND AMENDED AND RESTATED BYLAWS

of

SCHIFF NUTRITION INTERNATIONAL, INC.

EFFECTIVE , ,

ARTICLE I

Stockholders

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date, time and place either within or without the State of Delaware as may be designated by the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 1.2. Special Meetings. Special meetings of stockholders may be called at any time by the Chairman of the Board, if any, the Vice Chairman of the Board, if any, the CEO, the President, the Secretary, the Board of Directors, or the holders of record of not less than a majority of outstanding shares of stock entitled to vote on a matter at the meeting, to be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting. A special meeting of stockholders shall be called by the Secretary upon the written request, stating the purpose of the meeting, of stockholders who together own of record a majority of the outstanding shares of each class of stock entitled to vote at such meeting.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the

records of the Corporation.

Section 1.4. Adjournments. Any meeting of stockholders, annual or special, may be adjourned from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 1.5. Quorum. At each meeting of stockholders, except where otherwise provided by law or the certificate of incorporation or these bylaws, the holders of a majority of the outstanding shares of stock entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. In the absence of a quorum of the holders of any class of stock entitled to vote on a matter, the holders of such class so present or represented may, by majority vote, adjourn the meeting of such class from time to time in the manner provided by Section 1.4 of these bylaws until a quorum of such class shall be so present or represented.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the CEO, or in the absence of the CEO by the President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allocated to questions or comments by participants.

Section 1.7. Voting; Proxies. Unless otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in

2

law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by law or by the certificate of incorporation or these bylaws, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Section 1.8. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the

Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

3

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.9. List of Stockholders Entitled to Vote. The Secretary, or such other officer of the Corporation who has charge of the stock ledger of the Corporation, shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting, either (i) on a reasonable accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary course business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 1.10. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the certificate of incorporation or by law, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (i) its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (ii) its principal place of business, or (iii) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by these bylaws, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (i) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (ii) its principal place of business, or (iii) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Any copy, facsimile or other reliable reproduction of a

4

consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in this Section 1.10.

## ARTICLE II

### Board of Directors

Section 2.1. Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by law or in the certificate of incorporation. The Board of Directors shall consist of one or more members, the number thereof to be initially fixed by the Sole Incorporator of the Corporation and thereafter to be determined from time to time by the Board. Directors need not be stockholders.

Section 2.2. Election; Term of Office; Resignation; Removal; Vacancies. Each director shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation, disqualification or removal. Any director may resign at any time from the Board of Directors or any committee thereof upon notice given in writing or by electronic transmission to the Board of Directors or to the CEO, the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein or, if no time is specified, immediately, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class or from any other cause may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director elected or appointed to fill a vacancy shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, if any, by the Vice Chairman of the Board, if any, by the

5

CEO, by the President or by any two directors. Notice thereof stating the place, date, and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or electronic transmission on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 2.5. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors, or any committee designated by the Board or subcommittee thereof, may participate in a meeting of the Board or of such committee or subcommittee thereof, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.5 shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the then appointed Board shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the certificate of incorporation or these bylaws shall require a vote of a greater number. In case at any meeting of the Board a quorum shall not be present, the members of the Board present may adjourn the meeting from time to time until a quorum shall be present.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the CEO, or in the absence of the CEO by the President, or in their absence by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Directors Without a Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions or transmissions are filed with the minutes of proceedings of the Board or committee.

Section 2.9. Compensation of Directors. No director serving on the Board of Directors or any committee thereof will receive any compensation therefor from the Corporation; provided that nothing herein shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

6

## ARTICLE III

### Committees

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such



committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by law to be submitted to stockholders for approval, (ii) adopting, amending or repealing these bylaws or (iii) removing or indemnifying directors.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these bylaws.

## ARTICLE IV

### Officers

Section 4.1. Officers; Election. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect a CEO and a Secretary, and it may, if it so determines, elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board may also elect a President, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as the Board may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices may be held by the same person unless the certificate of incorporation or these bylaws otherwise provide.

7

Section 4.2. Term of Office; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution of the Board of Directors electing any officer, each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board may remove any officer with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation, but the election of an officer shall not of itself create contractual rights. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board at any regular or special meeting.

Section 4.3. Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these bylaws or in a resolution of the Board of Directors which is not inconsistent with these bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Secretary shall have the duty to record the proceedings of the meetings of the stockholders, the Board of Directors and any committees in a book to be kept for that purpose. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.4. CEO. The CEO shall, subject to the control of the Board of Directors and, if there is one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The CEO shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these bylaws, the Board of Directors or the CEO. In the absence or disability of the Chairman of the Board of Directors, or if there is no Chairman of the Board of Directors, the CEO shall preside at all meetings of the stockholders and, provided the CEO is also a director, at the Board of Directors. The CEO shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these bylaws or by the Board of Directors.

Section 4.5. President. At the request of the CEO or in the CEO's absence or in the event of the CEO's inability or refusal to act (and if there is no Chairman of the Board of Directors), the President shall perform the duties of the CEO and, when so acting, shall have all the powers and be subject to all the restrictions of the CEO. The President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there is no Chairman of the Board of Directors and no President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the CEO or in the event of the inability or refusal of the CEO to act, shall perform the duties of the CEO, and when so acting, shall have all the powers of and be subject to all the restrictions upon the CEO.

8

Section 4.6. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all of the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the

Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the CEO, to whom the Secretary shall report. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there is no Assistant Secretary, than either the Board of Directors or the CEO may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there is one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

## ARTICLE V

### Stock

Section 5.1. Stock Certificates and Uncertificated Shares. The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares of stock registered in certificate form owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

9

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefore, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned, or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

## ARTICLE VI

### Dividends

Section 6.1. Declaration. Dividends upon the capital stock of the corporation, subject to any restrictions contained in the Delaware General Corporation Law or the provisions of the certificate of incorporation, if any, may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property or in shares of capital stock, subject to the provisions of the certificate of incorporation.

Section 6.2. Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE VII

### Miscellaneous

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

10

Section 7.2. Seal. The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 7.3. Checks, Notes, Drafts, Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 7.4. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law or under any provision of the certificate of incorporation or these bylaws, a written waiver thereof or a waiver by electronic transmission, signed or given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice unless so required by the certificate of incorporation or these bylaws.

Section 7.5. Indemnification. To the fullest extent permitted by the certificate of incorporation, the Corporation shall indemnify its officers and directors and, in the sole discretion of the Board of Directors, may indemnify its employees and agents.

#### ARTICLE VIII

##### Amendment

Section 8.1. Amendment of Bylaws. These bylaws may be amended or repealed, in whole or in part, and new bylaws adopted, by the stockholders or by the Board of Directors.

11

#### EXHIBIT C

##### WRITTEN CONSENT

OF

CERTAIN STOCKHOLDERS

OF

SCHIFF NUTRITION INTERNATIONAL, INC.

Pursuant to Section 228 of the

Delaware General Corporation Law

The undersigned stockholders of Schiff Nutrition International, Inc., a Delaware corporation (the "Company"), acting pursuant to Section 228 of the Delaware General Corporation Law (the "DGCL") and Section 7 of the Amended and Restated Bylaws of the Company, consenting together as a single class, do hereby irrevocably consent to the adoption of the following recitals and resolutions without the necessity of a meeting of the stockholders of the Company:

Adoption of the Merger Agreement

WHEREAS, there has been submitted to the undersigned stockholders of the Company an Agreement and Plan of Merger (the "Merger Agreement"), dated as of November 21, 2012, by and among Reckitt Benckiser LLC, a Delaware limited liability company ("Parent"), Ascot Acquisition Corp., a Delaware corporation and a wholly-owned Subsidiary of Parent ("Merger Sub"), and Schiff Nutrition International, Inc., a Delaware corporation (the "Company") and, solely for the purposes of Section 6.17 thereof, Reckitt Benckiser Group plc, a public limited company organized under the laws of England and Wales, which provides for the merger of Merger Sub with and into the Company (the "Merger"), with the Company to continue as the surviving corporation of the Merger;

WHEREAS, capitalized terms used but not otherwise defined in this written consent (this "Written Consent") have the meanings set forth in the Merger Agreement;

WHEREAS, the Company Board has (i) determined that the Merger and the other transactions contemplated by the Merger Agreement are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable the

Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement in accordance with the requirements of the DGCL and (iii) recommended that the Company's stockholders vote their Shares in favor of adopting the Merger Agreement;

WHEREAS, pursuant to the terms and conditions of the Merger Agreement, each stockholder of the Company will be entitled to receive \$42.00 for each Share held by them immediately prior to the Effective Time, payable net to the stockholder in cash, without interest;

WHEREAS, the affirmative vote or written consent of the holders of Shares representing a majority of the voting power of the outstanding shares of the Company Common Stock entitled to vote thereon is the only vote required of the holders of any class of capital stock of the Company to adopt the Merger Agreement;

WHEREAS, the undersigned stockholders of the Company own, together, 7,486,574 shares of Class A Common Stock and 7,486,574 shares of Class B Common Stock, representing in the aggregate approximately 85.16% of the voting power of the outstanding Company Common Stock; and

WHEREAS, the undersigned stockholders of the Company have reviewed the Merger Agreement and such other information as they believe necessary to make an informed decision concerning their vote on the adoption of the Merger Agreement, and the undersigned have had the opportunity to consult with their own legal, tax and/or financial advisor(s) regarding the consequences to them of the Merger, the Merger Agreement and the execution of this Written Consent.

NOW, THEREFORE, BE IT:

RESOLVED, that the undersigned, in their capacity as stockholders of the Company, hereby adopt the Merger Agreement and approve in all respects the Merger and the other transactions contemplated by the Merger Agreement; and be it

FURTHER RESOLVED, that this written consent may be signed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument and that this written consent shall be irrevocable and filed with the minutes of the proceedings of the stockholders of the Company.

[Signature page follows]

2

IN WITNESS WHEREOF, each of the undersigned has executed this Written Consent on the date first set forth underneath its name below.

WEIDER HEALTH AND FITNESS

By:

Name: Eric Weider

Title: President

Date:

TPG STAR SNI, L.P.

By: TPG STAR ADVISORS, L.L.C.,

its general partner

By:

Name: Ronald Cami

Title: Vice President

Date:

3

EXHIBIT D

Weider Health and Fitness

TPG STAR SNI, L.P.