

such Proprietary Software, and there are no pending or, to the Knowledge of the Company, threatened claims alleging any such failure. To the Knowledge of the Company, none of the Proprietary Software is subject to any “copyleft” or other obligation or condition (including any obligation or condition under any “open source” license such as the GNU Public License, Lesser GNU Public License or Mozilla Public License) that (i) requires or conditions the use or distribution of such Proprietary Software on the disclosure, licensing or distribution of any source code for any portion of the Proprietary Software; or (ii) otherwise imposes an obligation on the Company to distribute any Proprietary Software on a royalty-free basis.

(e) The Company and its Subsidiaries have taken commercially reasonable measures (including commercially reasonable measures to enter into confidentiality and nondisclosure agreements and work for hire agreements with officers and employees of and consultants to the Company with access to or Knowledge of any Intellectual Property) to protect the secrecy and confidentiality of, material confidential Intellectual Property owned by the Company. To the Knowledge of the Company, no employee, independent contractor or agent of the Company holds any right, title or interest, directly or indirectly, in or to any Owned Intellectual Property or Proprietary Software. The Company and its Subsidiaries maintain commercially reasonable security and data protection procedures, in compliance with applicable law.

(f) The IT Systems are in good repair and operating condition, subject only to ordinary wear and tear. In the past 12 months, there has been no material failure or other material substandard performance of any IT System which has caused any material disruption to the business of the Company or its Subsidiaries. The Company has taken commercially reasonable steps to provide for the backup and recovery of material data and has implemented commercially reasonable disaster recovery plans and procedures consistent with industry standards. The Company has implemented industry standard protections intended to protect the physical and electronic integrity and security of the IT Systems and the software and information stored thereon, and to the Knowledge of the Company, such IT Systems do not contain any virus, time bomb, Trojan Horse, worm, backdoor, trap door, or other malicious code that would reasonably be expected to interfere with the conduct of the Business as currently conducted in any material respect.

Section 2.12 Litigation. (a) As of the date hereof there is no Litigation pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries and (b) there are no settlement agreements or similar written agreements with any Governmental Authority and no outstanding orders, judgments, stipulations, decrees, injunctions, determinations or awards issued by any Governmental Authority against or affecting the Company or any of its Subsidiaries, except, with respect to each of (a) and (b), as would not reasonably be expected, individually or in the aggregate, to be material to the Company and its Subsidiaries, taken as a whole.