

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	04/07/2008

**CONVEYING PARTY DATA**

Name	Execution Date
ColdWatt, Inc.	04/07/2008

**RECEIVING PARTY DATA**

Name:	Flextronics International USA, Inc.
Street Address:	2090 Fortune Drive
City:	San Jose
State/Country:	CALIFORNIA
Postal Code:	95131

**PROPERTY NUMBERS Total: 4**

Property Type	Number
Application Number:	11094632
Application Number:	11732301
Application Number:	11607325
Application Number:	10922062

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ATTORNEY DOCKET NUMBER:	CDW TO FLX
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**CH \$160.00 11094632**

NAME OF SUBMITTER:

Jill M. Errera

**Total Attachments: 61**

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**AGREEMENT AND PLAN OF MERGER**

**by and among**

**FLEXTRONICS INTERNATIONAL USA, INC.**

**CW MERGER COMPANY**

**COLDWATT, INC.**

**and**

**Michael L. Schulhof, solely as Stockholder Representative**

**Dated as of April 7, 2008**

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Exhibits

Exhibit A – Form of Certificate of Merger

Exhibit B – Form of No-Shop Agreement

This Merger Agreement (this “*Agreement*”) is entered into as of April 7, 2008, by and among Flextronics International USA, Inc., a California corporation (“*Buyer*”), CW Merger Company, a Delaware corporation and a wholly owned Subsidiary of Buyer (“*Merger Sub*”), ColdWatt, Inc., a Delaware corporation (“*Target*”) and, solely as Stockholder Representative, Michael L. Schulhof. Buyer, Merger Sub, Target and Stockholder Representative are referred to collectively herein as the “*Parties*.”

This Agreement contemplates a transaction in which Buyer will acquire all of Target’s outstanding shares of capital stock for cash, or (at the option of Target Stockholders) stock, through a reverse subsidiary merger of Merger Sub with and into Target.

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows.

*Definitions.*

“*Affiliate*” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

“*Allocation Certificate*” has the meaning set forth in Section 2.2(d) below.

“*Applicable Law*” means any applicable provision of any constitution, treaty, statute, law (including the common law), rule, regulation, ordinance, code or order enacted, adopted, issued or promulgated by any Governmental Authority

“*Buyer*” has the meaning set forth in the preface above.

“*Buyer Share*” means the shares of common stock of Flextronics International, Ltd.

“*Buyer Share Price*” means, (i) with respect to the Merger Consideration, the average trading price per share of Buyer Shares for the twenty (20) business days prior to the two (2) days prior to the Closing Date, as quoted on the National Association of Securities Dealers Automated Quotation System and (ii) (i) with respect to the Earn-out Payment, the average trading price per share of Buyer Shares for the twenty (20) business days prior January 31, 2010, as quoted on the National Association of Securities Dealers Automated Quotation System.

“*Certificate of Incorporation*” means the Target’s certificate of incorporation, as in effect prior to the Closing.

“*Certificate of Merger*” has the meaning set forth in Section 1.3 below.

“*Closing*” has the meaning set forth in Section 1.2 below.

“*Closing Date*” has the meaning set forth in Section 1.2 below.

“*Closing Merger Consideration*” shall mean the Merger Consideration minus the Indemnification Holdback.

“*Code*” means the Internal Revenue Code of 1986, as amended.



“*Common Stock*” means the Target’s common stock with par value of \$0.001 per share.

“*Company Plan*” means a Plan of which Target, any of its Subsidiaries or any ERISA Affiliate is or was a Plan Sponsor, or to which Target, any of its Subsidiaries or any ERISA Affiliate otherwise contributes or has contributed, or in which any employee of any Target, any of its Subsidiaries or any ERISA Affiliate otherwise participates or has participated

“*Confidential Information*” means any information concerning the business and affairs of Target and its Subsidiaries that is not already generally available to the public.

“*Contract*” means any contract, agreement, purchase order, warranty or guarantee, license, use agreement, lease (whether for real estate, a capital lease, an operating lease or other), instrument or note, in each case that creates a legally binding obligation, and in each case whether oral or written.

“*Convertible Note Purchase Agreement*” means that certain Secured Convertible Note and Warrant Purchase Agreement, dated as of December 10, 2007.

“*Defense*” means legal defense (which may include related counterclaims) reasonably conducted by reputable legal counsel of good standing selected with the written consent of Buyer (which consent will not be unreasonably withheld).

“*Delaware General Corporation Law*” means the General Corporation Law of the State of Delaware, as amended.

“*Disclosure Schedule*” has the meaning set forth in Section 3 below.

“*Dissenting Share*” has the meaning set forth in Section 2.1(g) below.

“*Dissenting Stockholder*” has the meaning set forth in Section 2.1(g) below.

“*Earn-out Payment*” has the meaning set forth in Section 2.4(a) below.

“*Earn-out Period*” has the meaning set forth in Section 2.4 below.

“*Effective Time*” has the meaning set forth in Section 2(d)(i) below.

“*Environmental Law*” means any applicable federal, state or local law or other legal requirement relating to pollution or protection of the environment, including any law relating to any emission, discharge, release or possible release of any pollutant, contaminant, hazardous or toxic material, substance or waste into air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any pollutant, contaminant or hazardous or toxic material, substance or waste.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended.

“*ERISA Affiliate*” means any (if any) corporation, trade or business (whether or not incorporated) that is under common control with Target or any of its Subsidiaries pursuant to section 414(b) and (c) of the Code.

“*Estimated Merger Consideration Deduction*” has the meaning set forth in Section 2.2(c) below.

“*GAAP*” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“*Governmental Authority*” means any: (a) nation, state, county, city, district or other similar jurisdiction of any nature; (b) federal, state, local or foreign government; (c) governmental or quasi governmental authority of any nature (including any governmental agency, branch, commission, bureau, instrumentality, department, official, entity, court or tribunal); (d) multi national organization or body; or (e) body or other Person entitled by applicable law to exercise any arbitral, administrative, executive, judicial, legislative, police, regulatory or Taxing authority or power.

“*Hazardous Materials*” means any pollutant, contaminant, hazardous substance, hazardous waste or petroleum or fraction thereof, and any other chemical, waste, substance or material listed in or regulated by or identified in any Environmental Law.

“*Indebtedness*” shall mean all principal, interest, prepayment penalties, premiums and other amounts due for borrowed money, including capitalized leases and other notes payable, of Target and its Subsidiaries, but not including the Working Capital Loan (which Working Capital Loan will take into account certain costs of restructuring in accordance with Section 5.2(b)). For the avoidance of doubt, Indebtedness shall not include Target accounts payable (whether or not current).

“*Indemnification Holdback*” shall mean 12.5% of the Merger Consideration before any Merger Consideration Deductions. For the avoidance of doubt, the Indemnification Holdback amount is \$687,500.00.

“*Intellectual Property*” means any trademark, service mark, trade name, trade dress, goodwill, patent, copyright, design, logo, formula, invention (whether or not patentable or reduced to practice), concept, domain name, website, trade secret, know how, confidential information, mask work, product right, software, technology or other intangible asset of any nature, whether in use, under development or design or inactive (including any registration, application or renewal regarding any of the foregoing).

“*Knowledge*” means the actual knowledge of each officer and director of Target, including, without limitation Joe Lamoreaux and William J. Rabb.

“*Liability*” means any liability or obligation of any kind or nature (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“*Lien*” means any mortgage, pledge, lien, encumbrance, charge, or other security interest, other than (a) liens for taxes not yet due and payable, (b) purchase money liens and liens securing rental payments under capital lease arrangements, and (c) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

“*Material Adverse Effect*” or “*Material Adverse Change*” means any effect or change that would be (or would reasonably be expected to be) materially adverse (a) to the business, assets, condition (financial or otherwise), operating results, operations, or business prospects of Target and

its Subsidiaries, taken as a whole, (other than those resulting from (1) changes in economic conditions generally in the United States, (2) conditions generally affecting the industries in which Target participates or (3) the announcement or consummation of the transactions contemplated by this Agreement or any customer, supplier or employee response thereto; provided that with respect to clauses (1) and (2) the changes or conditions do not have a materially disproportionate effect (relative to other participants in such industries)) or (b) to the ability of Target or any of its Subsidiaries to consummate timely the transactions contemplated hereby (regardless of whether or not such adverse effect or change can be or has been cured at any time or whether Buyer has knowledge of such effect or change on the date hereof).

“*Merger*” has the meaning set forth in Section 1.1 below.

“*Merger Consideration*” shall mean \$5,500,000; minus the Estimated Merger Consideration Deductions.

“*Merger Consideration Deductions*” shall mean the sum of

- (a) the aggregate amount of Indebtedness immediately prior to the Effective Time;
- (b) any bonus amounts payable by Target or its Subsidiaries in connection with the transactions contemplated by this Agreement other than bonus amounts payable pursuant to the ColdWatt, Inc. Acquisition Bonus Plan dated as of December 4, 2007; provided that bonuses paid pursuant to such plan may not exceed five percent (5%) of (i) the total Merger Consideration plus (ii) the estimated Earn-out Payment plus (iii) up to \$950,000 of the principal amounts funded under the Working Capital Loan;
- (c) any legal and accounting fees, investment banker or broker fees, prepayment penalties or premiums on Indebtedness, stamp duties or transfer taxes, commissions, fees or other amounts payable by Target or its Subsidiaries to any other party in connection with the transactions contemplated by this Agreement;
- (d) any interest amounts accrued or paid as of the Closing pursuant to the Convertible Note Purchase Agreement;
- (e) any shortfall in any pension obligation assumed by Buyer on the Most Recent Balance Sheet, based on the calculation of the projected benefit obligation in accordance with SFAS No. 87 (paragraph 74);
- (f) the value of any new options for Buyer Shares granted to employees of Target in exchange for any in-the-money vested options for Target Shares or options for Target Shares which are vested as a result of the transactions contemplated by this Agreement; and
- (g) in the event that the transactions contemplated by this Agreement are not treated as a taxable stock purchase for U.S. income tax purposes, the lost tax benefit to Buyer from not receiving a tax basis in the Surviving Company stock equal to the total Closing Merger Consideration, the Holdback Payment and the Earn-out Payment.

“*Merger Sub*” has the meaning set forth in the preface above.

“*Option Plan*” means Target’s 2005 Stock Option/Stock Issuance Plan, as amended.

“*Options*” means any options to purchase Target Shares.

“*Order*” means any order, writ, injunction, decree, judgment, award or determination of or from any Governmental Authority (or similar Proceeding).

“*Ordinary Course of Business*” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

“*Party*” has the meaning set forth in the preface above.

“*Person*” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental entity (or any department, agency, or political subdivision thereof).

“*Plan*” means an “employee benefit plan” (as such term is defined in section 3(3) of ERISA) and any other employee benefit plan, program, agreement or arrangement of any kind, including any: stock option or ownership plan; stock appreciation rights plan; stock purchase plan; phantom stock plan; executive compensation plan; bonus, incentive compensation, deferred compensation or profit sharing plan; or arrangement regarding any vacation, holiday, sick leave, fringe benefit, educational assistance, pre Tax premium or flexible spending account plan or life insurance.

“*Plan Sponsor*” has the meaning given in section 3(16)(B) of ERISA

“*Proceeding*” means any action, arbitration, audit, claim, demand, grievance, complaint, hearing, inquiry, investigation, litigation, proceeding or suit (whether civil, criminal or administrative).

“*Qualifying Revenue*” means all revenue, as computed in accordance with GAAP, earned by Buyer and its Subsidiaries during the Earn-out Period from the sale of power supply modules with an output power equal to or greater than 500 watts and related power distribution boards; provided that this shall not include sales: (i) to Force 10 of Buyer’s or its Subsidiaries’ product lines existing as of the Effective Time; (ii) of any Electronic Manufacturing Services provided to third parties to manufacture their own products; or (iii) of any products acquired as a result of any acquisition by Buyer or its Subsidiaries other than the acquisition contemplated by this Agreement.

“*Redeemable Preferred Share*” means a share of the Target’s redeemable preferred stock.

“*Redeemable Preferred Share Payment*” has the meaning set forth in Section 2.3(a)(i) below.

“*Redeemable Preferred Stockholder*” means any Person who or that holds any Redeemable Preferred Shares.

“*Requisite Stockholder Approval*” means the affirmative vote of the holders of a majority of each class of the Target Shares, including the holders of the Targets’ Common Stock, Series A Preferred Stock and Series B Preferred Stock, in favor of this Agreement and the Merger.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Securities Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Series A Percentage*” means the Series A Preferred Per Share Amount divided by the sum of (i) the Series A Preferred Per Share Amount plus (ii) the Series B Preferred Per Share Amount.

“*Series A Preferred Per Share Amount*” means \$0.50 plus the amount of any accrued but unpaid dividends for each share of Series A Preferred Stock as of the Effective Time.

“*Series A Preferred Share Payment*” has the meaning set forth in Section 2.3(a)(ii) below.

“*Series A Preferred Shares*” means a share of the Target’s series A preferred stock.

“*Series A Preferred Stockholder*” means any Person who or that holds any Series A Preferred Shares.

“*Series B Percentage*” means the Series B Preferred Per Share Amount divided by the sum of (i) the Series A Preferred Per Share Amount plus (ii) the Series B Preferred Per Share Amount.

“*Series B Preferred Per Share Amount*” means \$0.6345 plus the amount of any accrued but unpaid dividends for each share of Series B Preferred Stock as of the Effective Time.

“*Series B Preferred Share Payment*” has the meaning set forth in Section 2.3(a)(ii) below.

“*Series B Preferred Share*” means a share of the Target’s series B preferred stock.

“*Series B Preferred Stockholder*” means any Person who or that holds any Series B Preferred Stock.

“*Stockholder Representative*” means Michael L. Schulhof.

“*Subsidiary*” means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term “*Subsidiary*” shall include all Subsidiaries of such Subsidiary.

“*Surviving Corporation*” has the meaning set forth in Section 1.1 below.

“*Target*” has the meaning set forth in the preface above.

“*Target Share*” means any share of the Target’s capital stock, including its Common Stock, Redeemable Preferred Stock, Series A Preferred Stock and Series B Preferred Stock.

“*Target Restructuring Plan*” means the plan of restructuring and cost reduction to be

implemented by Target after the date hereof but prior to closing, which plan will not, without the prior written consent of Buyer provide for (i) the termination or the initiation of the termination of any agreed upon “stay” employee, (ii) the termination or the initiation of the termination of any engineering software licenses, or (iii) the termination or the initiation of the termination of any intellectual property; provided, that Buyer provides financial coverage, through the Working Capital Loan or the extension of payment terms on trade accounts payable, with respect to: (X) employee termination costs, (Y) lease termination costs, and (Z) termination costs pursuant to contractual obligations with vendors and suppliers (not including any costs covered by Section 8.2(f))

“*Target Stockholder*” means any Person who or that holds any Target Shares.

“*Tax*” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, fine, penalty or similar addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax Liability of any other Person.

“*Tax Return*” means any return, declaration, report, filing, claim for refund or information return or statement relating to any Tax, including any schedule or attachment thereto and including any amendment thereof.

“*Working Capital Loan*” means the loan made to Target by Flextronics International USA, Inc. pursuant to that certain Secured Note Purchase Agreement dated as of March 21, 2008.

## Article 1. **Basic Transaction**

1.1 **Merger.** On and subject to the terms and conditions of this Agreement, Merger Sub will merge with and into Target (the “*Merger*”) at the Effective Time. Target shall be the corporation surviving the Merger (the “*Surviving Corporation*”).

1.2 **Closing.** The closing of the transactions contemplated by this Agreement (the “*Closing*”) shall take place at the offices of Faegre & Benson LLP, 1700 Lincoln Street, Denver, Colorado 80203, commencing at 9:00 a.m. local time on the first business day following the satisfaction or waiver of all conditions to closing set forth in Article 6 (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Parties may mutually determine (the “*Closing Date*”).

1.3 **Actions at Closing.** At the Closing, (i) Target will deliver to Buyer and Merger Sub the various certificates, instruments, and documents referred to in Section 6.2 below, (ii) Target and Merger Sub will file with the Secretary of State of the State of Delaware a Certificate of Merger in the form attached hereto as Exhibit A (the “*Certificate of Merger*”), and (iii) Buyer will deliver cash or Buyer Shares in the amount of the Merger Consideration to the Target Stockholders as set forth in Section 2.3.

#### 1.4 **Effect of Merger.**

(a) General. The Merger shall become effective at the time (the “*Effective Time*”) Target and Merger Sub file the Certificate of Merger with the Secretary of State of the State of Delaware. The Merger shall have the effect set forth in the Delaware General Corporation Law. Surviving Corporation may, at any time after the Effective Time, take any action (including executing and delivering any document) in the name and on behalf of either Target or Merger Sub in order to carry out and effectuate the transactions contemplated by this Agreement.

(b) Certificate of incorporation. The certificate of incorporation of Surviving Corporation shall be amended and restated at and as of the Effective Time to read as did the certificate of incorporation of Merger Sub immediately prior to the Effective Time (except that the name of Surviving Corporation will remain unchanged).

(c) Bylaws. The bylaws of Surviving Corporation shall be amended and restated at and as of the Effective Time to read as did the bylaws of Merger Sub immediately prior to the Effective Time (except that the name of Surviving Corporation will remain unchanged).

(d) Directors and Officers. The directors and officers of Merger Sub shall become the directors and officers of Surviving Corporation at and as of the Effective Time (retaining their respective positions and terms of office).

1.5 **Closing of Transfer Records.** After the close of business on the Closing Date, transfers of Target Shares outstanding prior to the Effective Time shall not be made on the stock transfer books of Surviving Corporation.

### Article 2. **Merger Consideration and Conversion of Target Shares**

#### 2.1 **Conversion of Capital Stock.**

(a) Capital Stock of Merger Sub. At the Effective Time, by virtue of the Merger, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time (“*Merger Sub Common Stock*”) will be converted into and become one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation (“*Surviving Corporation Common Stock*”), so that, immediately following the Effective Time, Buyer shall be the holder of all of the issued and outstanding shares of Surviving Corporation Common Stock. Each certificate representing outstanding shares of Merger Sub Common Stock will at the Effective Time represent an equal number of shares of Surviving Corporation Common Stock.

(b) Treasury Stock; Stock Owned by Buyer. At the Effective Time, by virtue of the Merger, all Target Shares that are owned by Target as treasury stock or owned by Buyer will be canceled and will cease to exist and no consideration will be delivered in exchange therefore.

(c) Surrender of Stock Certificates. As of the Effective Time, as a condition to a Target Stockholder receiving Merger Consideration in respect of Target Shares, such Target Stockholder must surrender to Buyer all stock certificates for such Target Shares. If any stock certificate for Target Shares has been lost, stolen or destroyed, an affidavit of that fact by the Target Stockholder claiming such document to be lost, stolen or destroyed and delivery of an indemnity against any claim that may be made against Buyer, shall be provided in lieu of such stock certificate.

(d) Stock Transfer Books. At the Effective Time, the stock transfer books of Target will be closed and thereafter there will be no further registration of transfers on the stock transfer books of the Surviving Corporation of Target Shares.

(e) Conversion of Target Shares. At the Effective Time, by virtue of the Merger, all Target Shares (other than those shares to be canceled in accordance with Section 2.1(b) or Dissenting Shares) will no longer be outstanding and will be canceled and retired automatically and will cease to exist, and each Target Stockholder will cease to have any rights with respect thereto, except the right to receive its respective portion of the Closing Merger Consideration, the Holdback Payment, if any, and the Earn-out Payment, if any, payable in accordance with and in the manner provided by, and subject to the limitations and conditions in, Section 2.3 hereof.

(f) Termination of Options. As of the Effective Time, each outstanding Option shall be canceled and retired by virtue of the Merger and pursuant to the terms of the Option Plan. At the Effective Time, the Option Plan shall terminate.

(g) Dissenting Stockholders. Notwithstanding anything in this Agreement to the contrary, any issued and outstanding Target Shares held by a Person (a "*Dissenting Stockholder*") who has not voted in favor of or consented to the adoption of this Agreement and the Merger and has complied with all the provisions of the Delaware General Corporation Law concerning the right of holders of Target Shares to require appraisal of their Target Shares ("*Dissenting Shares*") shall not be converted into the right to receive the Merger Consideration and other consideration set forth in Section 2.3, but shall become the right to receive such consideration as may be determined to be due to such Dissenting Stockholder pursuant to the procedures set forth in Section 262 of the Delaware General Corporation Law. If such Dissenting Stockholder withdraws its demand for appraisal or fails to perfect or otherwise loses its right of appraisal, in any case pursuant to the Delaware General Corporation Law, its Target Shares shall be deemed to be converted as of the Effective Time into the right to receive the Merger Consideration and other consideration set forth in Section 2.3 for each such Dissenting Share, without interest. Target shall give Buyer prompt notice of any demands for appraisal received by Target, withdrawals of such demands and any other instruments served pursuant to Section 262 of the Delaware General Corporation Law and shall give Buyer the opportunity to participate in all negotiations and proceedings with respect thereto. Target shall not, without the prior written consent of Buyer, make any payment with respect to, or settle or offer to settle, any such demands.

## 2.2 Closing Payment Estimate.

(a) Within five (5) business days prior to Closing, Target shall provide Buyer with (i) a schedule setting forth Target's good faith estimate of the Merger Consideration Deductions as of the Closing Date and (ii) a reasonably detailed computation of each item thereof.

(b) Buyer shall have the opportunity to review such estimated Merger Consideration Deductions and discuss any disagreements with Target.

(c) The Buyer and Target shall negotiate in good faith and agree on the estimated Merger Consideration Deductions for purposes of the Closing (the "*Estimated Merger Consideration Deductions*").



(d) Upon agreement of the Estimated Merger Consideration Deductions, but at least two business days prior to the Closing, Target shall provide Buyer with an allocation certificate disclosing the net amounts payable to each Target Stockholder upon the Closing based on the payment provisions of Section 2.3 (the “*Allocation Certificate*”).

(e) Within five (5) business days prior to the Closing, any Target Stockholder wishing to receive any consideration to be delivered at Closing by wire transfer shall provide Buyer with wire transfer instructions, which shall be used for purposes of all payments hereunder unless updated by written notice by such Target Stockholder delivered to Buyer.

### 2.3 Closing Payment.

(a) At the Effective Time, subject to the receipt of Target Shares in accordance with Section 2.1(c), Buyer shall pay the Closing Merger Consideration to the Target Stockholders in accordance with the following provisions:

(i) first, the Redeemable Preferred Per Share Amount to each Redeemable Preferred Stockholder for each Redeemable Preferred Share held by such Redeemable Preferred Stockholder immediately prior to the Effective Time; provided that if the Closing Merger Consideration is not sufficient to pay each Redeemable Preferred Stockholder in full, the Closing Merger Consideration shall be paid ratably for each Redeemable Preferred Share outstanding immediately prior to the Effective Time (such total amount paid with respect to each Redeemable Preferred Share under this Section is the “*Redeemable Preferred Share Payment*”);

(ii) second, if the Closing Merger Consideration exceeds the total Redeemable Preferred Share Payments, (A) the Series A Preferred Per Share Amount to each Series A Preferred Stockholder for each Series A Preferred Share held by such Series A Preferred Stockholder immediately prior to the Effective Time and (B) the Series B Preferred Per Share Amount to each Series B Preferred Stockholder for each Series B Preferred Share held by such Series B Preferred Stockholder immediately prior to the Effective Time; provided that if the remaining Closing Merger Consideration is not sufficient to pay each Series A Preferred Stockholder and Series B Preferred Stockholder in full, the remaining Closing Merger Consideration shall be shared by the Series A Preferred Stockholders and Series B Preferred Stockholders with the Series A Percentage of the remaining Closing Merger Consideration shared ratably for each Series A Preferred Share and the Series B Percentage of the remaining Closing Merger Consideration shared ratably for each Series B Preferred Share. The total amount paid with respect to each Series A Preferred Share under this Section shall be referred to as the “*Series A Preferred Share Payment*” and the total amount paid with respect to each Series B Preferred Share under this Section shall be referred to as the “*Series B Preferred Share Payment*”;

(iii) if the Closing Merger Consideration exceeds the total Redeemable Preferred Share Payments, the total Series A Preferred Share Payments and the total Series B Preferred Share Payments, the remaining Closing Merger Consideration shall be paid ratably to each Series B Redeemable Preferred Share and share of Common Stock outstanding immediately prior to the Effective Time.

(b) After the Effective Date, Buyer and Stockholder Representative shall recalculate the Merger Consideration Deductions and negotiate in good faith to agree on a revised

amount for the Merger Consideration Deductions (the “*Revised Merger Consideration Deductions*”). In the event the Revised Merger Consideration Deductions are greater than the Estimated Merger Consideration Deductions, such difference (the “*Merger Consideration Excess*”) shall be deducted from future payments to be made by Buyer as part of either (i) the Holdback Payment or (ii) the Earn-out Payment. In the event the Revised Merger Consideration Deductions are less than the Estimated Merger Consideration Deductions, such difference (the “*Merger Consideration Shortfall*”) shall be paid to Target Stockholders in accordance with Section 2.3(a) as if included as part of the original Closing Merger Consideration (taking into account all previous payments made to such Target Stockholders).

(c) In the Event that the Holdback Payment is released by Buyer in accordance Section 8.6, the Holdback Payment shall be paid to Target Stockholders in accordance with Section 2.3(a) as if included as part of the original Closing Merger Consideration (taking into account all previous payments made to such Target Stockholders).

(d) In the Event that an Earn-out Payment is earned pursuant to Section 2.4, the Earn-out Payment shall be paid to Target Stockholders in accordance with Section 2.3(a) as if included as part of the original Closing Merger Consideration (taking into account all previous payments made to such Target Stockholders).

(e) All payments of the Closing Merger Consideration or the Earn-out Payment shall be payable in cash, unless any Electing Stockholder elects to receive such payment in Buyer Shares pursuant to Section 2.5. All payments of the Merger Consideration Shortfall or the Holdback Payment shall be payable in cash.

**2.4 Earn-Out.** In addition to the Merger Consideration, Buyer will pay additional consideration based on the Qualifying Revenue generated during the period from January 1, 2009 to December 31, 2009 (the “*Earn-out Period*”) as provided below.

(a) Buyer shall pay to the Target Stockholders, in accordance with Section 2.3(d), the amount (the “*Earn-out Payment*”) set forth in the “Earn-out Payment” column of Table 1 below based on the corresponding Qualifying Revenue generated in the Earn-out Period as set forth in Table 1 below; provided that the amount of any Earn-out Payment earned pursuant to this Section 2.4 may be reduced by the amount of any indemnification claims in accordance with Article 8.

Table 1 – Earn-Out Amount.

Qualifying Revenue	Earn-Out Payment
Less than \$50,000,000	\$0
At least \$50,000,000 but less than \$100,000,000	\$3,500,000
At least \$100,000,000 but less than \$150,000,000	\$5,000,000
At least \$150,000,000 but less than \$200,000,000	\$10,000,000
\$200,000,000 or greater	\$20,000,000

(b) Buyer shall provide its calculation of the Qualifying Revenue, and a reasonably detailed computation thereof, to Stockholder Representative no later than January 25, 2010. Stockholder Representative shall have the opportunity to review such computation and discuss any disagreements with Buyer. In addition, Stockholder Representative and its designated legal and accounting advisors will have reasonable access during normal business hours to inspect the records, working papers, schedules and other documentation used or prepared by Buyer and its auditors in connection with the preparation of such calculation of Qualifying Revenue. Stockholder Representative and Buyer shall negotiate in good faith and agree on the Qualifying Revenue for purposes of the Earn-out Payment. Upon agreement of the Qualifying Revenue, but prior to the payment of the Earn-out Payment, Stockholder Representative shall provide Buyer with an updated Allocation Schedule.

(c) If the parties agree on the Qualifying Revenue, and Stockholder Representative provides an updated Allocation Schedule, by January 28, 2010, any Earn-Out Payment earned pursuant to this Section 2.4 shall be paid to the Stockholders, in accordance with Section 2.3(d), by February 1, 2010.

(d) If the parties are not able to agree on the Qualifying Revenue, the parties will submit the matter to arbitration, which will be governed by Section 9.8.

## 2.5 Consideration Payment.

(a) Any payment made in accordance with this Article 2 shall be made in cash, pursuant to wire instructions provided by each Target Stockholder prior to Closing, unless such Target Stockholder makes the election set forth in Section 2.6.

(b) In calculating the consideration payable under this Article 2, Buyer shall be entitled to rely on the representations and warranties contained in this Agreement with respect to the shares of capital stock of Target and the issued and outstanding options and warrants to purchase shares of capital stock of Target and upon the information contained in the Allocation Certificate. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate consideration payable to Target Stockholders in connection with the transactions contemplated hereby exceed the Merger Consideration (as modified by the revised Estimated Merger Consideration Deductions) and the Earn-out Payment.

2.6 **Election to receive Buyer Shares.** At the election of any Target Stockholder, such Target Stockholder may elect to receive its portion of any Closing Merger Consideration or Earn-out Payment in shares of Buyer Stock according to the following procedures:

(a) The electing Target Stockholder shall provide Buyer with written notice of its election to receive Buyer Shares at least 5 days prior to the Effective Time (or at least 5 days prior to the day on which Buyer will make payments with respect to Earn-out Payments). Each Target Stockholder providing such notice shall be an "*Electing Target Stockholder*". The failure to timely provide such a notice will be evidence that a Target Stockholder elects to receive the cash consideration set forth above.

(b) In lieu of any cash consideration set forth in Sections 2.3 above, each Electing Target Stockholder shall receive such number of Buyer Shares as is determined by multiplying the

amount of any cash consideration such Electing Stockholder would have received pursuant to 2.3 by the Buyer Share Price, provided that no fractional Buyer Shares shall be issued in accordance with this Section 2.6(b).

(c) If the formula provided above results in a fractional share of Buyer Stock to be issued to a Electing Target Stockholder, such Electing Target Stockholder shall receive (i) such number of Buyer Shares rounded down to the nearest whole Buyer Share and (ii) in lieu of any fractional Buyer Share, cash in an amount equal to the value of such fractional share based on the Buyer Share Price. Any Electing Target Stockholder entitled to a fractional share or interest shall not be entitled by reason thereof to any voting, dividend or other rights as a stockholder of Buyer.

(d) Buyer shall have no obligation to register any of the Buyer Shares paid to Electing Target Stockholders pursuant to the Securities Act. As a condition to receiving Buyer Shares, Electing Target Stockholders shall execute such documents as are reasonably requested by Buyer to evidence the Electing Target Stockholder's acknowledgement that the Buyer Shares will not be registered and covering other requirements under the Securities Act.

Article 3. **Target's Representations and Warranties.** Target represents and warrants to Buyer and Merger Sub that the statements contained in this Article 3 are correct and complete as of the date of this Agreement and as of the Closing Date as though made on and as of such date (other than such representations and warranties as are made of another date, which shall be so true and correct as of such date), except as set forth in the disclosure schedule accompanying this Agreement (the "*Disclosure Schedule*"). The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Article 3.

3.1 **Organization, Qualification, and Corporate Power.** Each of Target and its Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each of Target and its Subsidiaries is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. Each of Target and its Subsidiaries has full corporate power and authority to carry on the business in which it is engaged and to own and use the properties owned and used by it. The Target has delivered to Buyer correct and complete copies of the charter and bylaws (or equivalent constituent documents) for the Target and each Subsidiary, as amended to date.

### 3.2 **Capitalization.**

(a) Schedule 3.2(a) sets forth the authorized, issued and outstanding capital stock of the Target and all outstanding options and warrants of the Target. Except as set forth in Schedule 3.2(a), there are no shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock or other equity securities of Target issued, reserved for issuance or outstanding and no outstanding options, warrants, convertible or exchangeable securities, purchase rights (including any preemptive rights), subscription rights, conversion rights, exchange rights, stock appreciation rights, calls or commitments of any character whatsoever to which Target is a party or may be bound requiring the issuance or sale of additional capital stock of Target.

(b) All of the issued and outstanding shares of capital stock of Target are duly authorized, validly issued, fully paid and nonassessable and are held of record by the respective holders as set forth in Schedule 3.2(b) as of the date hereof.

(c) None of the issued and outstanding shares of capital stock of Target or any of the Subsidiaries was issued in violation of the Securities Act.

**3.3 Subsidiaries.** Schedule 3.3 lists each of Target's Subsidiaries and the authorized, issued and outstanding capital stock of each Subsidiary. The outstanding shares of capital stock of each Subsidiary are duly authorized, validly issued, fully paid and nonassessable and are owned by Target, directly or through one or more Subsidiaries, and such shares are free and clear of any restrictions on transfer, Taxes, Liens, options, warrants, convertible or exchangeable securities, purchase rights (including any preemptive rights), subscription rights, conversion rights, exchange rights, stock appreciation rights, calls or similar rights. Except as set forth in Schedule 3.3, there are no shares of capital stock or other equity securities of any Subsidiary issued, reserved for issuance or outstanding and there are no outstanding options, warrants, convertible or exchangeable securities, purchase rights (including any preemptive rights), subscription rights, conversion rights, exchange rights, stock appreciation rights, calls or similar rights pursuant to which the Subsidiaries are a party or may be bound requiring the issuance or sale of shares of any capital stock of the Subsidiaries. There are no voting trusts, proxies, or other similar agreements with respect to the voting of any capital stock of any Subsidiary.

**3.4 Authorization of Transaction.** Target has the full power and authority (including full corporate power and authority) to execute and deliver this Agreement and the other agreements contemplated by this Agreement to be entered into by Target at Closing and to perform its obligations hereunder and thereunder; provided, however, that Target cannot consummate the Merger unless and until it receives (i) the Requisite Stockholder Approval and (ii) the consents set forth in Schedule 3.5(b). This Agreement constitutes the valid and legally binding obligation of Target and each of its Subsidiaries, enforceable in accordance with its terms and conditions.

**3.5 Non-contravention; Consents.**

(a) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Target or any of its Subsidiaries is subject or any provision of the charter or bylaws of Target or any of its Subsidiaries or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Target or any of its Subsidiaries is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets). Other than (i) in connection with the provisions of the Delaware General Corporation Law or (ii) as set forth in Schedule 3.5(b), neither Target nor any of its Subsidiaries needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

(b) Except as listed in Schedule 3.5(b), no consent or approval by, notification to or filing with any Person is required in connection with Target's execution, delivery or performance of this Agreement or Target's consummation of the transactions contemplated herein or therein. "*Consent*" means each consent, approval, notice or filing listed in Schedule 3.5(b). "*Required Consent*" means each Consent labeled as a Required Consent in Schedule 3.5(b).

### 3.6 Financial Statements.

(a) Schedule 3.6 contains a true, correct and complete copy of the following: (i) the audited balance sheet of Target, on a consolidated basis, as of each of December 31, 2005 and December 30, 2006 (the latter of such dates is referred to as the “*Annual Balance Sheet Date*” and such balance sheet as of the Annual Balance Sheet Date as the “*Annual Balance Sheet*”); (ii) the audited income statements of Target, on a consolidated basis, for the fiscal year ended on each of the Annual Balance Sheet Date and December 31, 2005 (the “*Annual Income Statement*”); (iii) the notes to the foregoing and the reports thereon of Target’s independent auditors (collectively, with the Annual Balance Sheet and the Annual Income Statement, the “*Annual Financial Statements*”); and (iv) the unaudited balance sheet and the unaudited income statements of Target, on a consolidated basis for the fiscal year ended December 29, 2007 (the “*2007 Financial Statements*”); and (v) the unaudited balance sheet of Target, on a consolidated basis, as of January 31, 2008 (such date is referred to as the “*Interim Balance Sheet Date*” and such balance sheet is the “*Interim Balance Sheet*” and collectively, with the Annual Financial Statements, the “*Financial Statements*”).

(b) The Financial Statements (i) were prepared in accordance with GAAP, (ii) were prepared in accordance with, and are consistent with, the books and records of Target and (iii) fairly present, in all material respects, the assets, liabilities and financial condition of Target and its Subsidiaries at their respective dates and the results of operations of Target and its Subsidiaries for the respective periods covered thereby, except that the 2007 Financial Statements and the Interim Financial Statements are subject to normal year end adjustments and do not have notes included therewith.

**3.7 Events Subsequent to Interim Balance Sheet Date.** Except as set forth on Schedule 3.7, since the Interim Balance Sheet Date, Target and its Subsidiaries have conducted their respective businesses in all material respects in the ordinary course consistent with past practice, and there has not been (i) any Material Adverse Change with respect to Target or any event, circumstance or occurrence that has had or would reasonably be expected to have a Material Adverse Effect with respect to Target, (ii) any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock or equity interests or any redemption, purchase or other acquisition of any of its capital stock or equity interests, (iii) any split, combination or reclassification of any of its capital stock or equity interests or any issuance or the authorization of any issuance of any other securities or equity interests in respect of, in lieu of or in substitution for shares of its capital stock or equity interests, (iv) any change in accounting methods, principles or practices used by Target or any of its Subsidiaries materially affecting its assets, liabilities or business, except insofar as may have been required by a change in GAAP, (v) any material damage, destruction or loss (whether or not covered by insurance) other than in the ordinary course of business, or (vi) any agreement by Target or any of its Subsidiaries to do any of the foregoing.

**3.8 Undisclosed Liabilities.** Except as set forth on Schedule 3.8, neither Target nor any of its Subsidiaries has any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for taxes, except for (i) liabilities set forth on the face of the Interim Balance Sheet (rather than in any notes thereto), (ii) liabilities that have arisen after the Interim Balance Sheet Date in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of

warranty, tort, infringement, or violation of law) and (iii) liabilities that have or will result from the implementation of the Target Restructuring Plan.

### 3.9 Taxes.

(a) All Tax Returns that were required to be filed by, on behalf of or with respect to Target or any of its Subsidiaries were timely filed on or before the applicable due date (taking into account any extension of such due date) and were correct and complete in all material respects. All Taxes owed by or with respect to Target or any of its Subsidiaries with respect to any pre-Closing period were paid when due, or, in the case of Taxes not yet due but which become due on or before the Closing Date, will be paid in full before the Effective Time.

(b) No claim has ever been made by an authority in a jurisdiction where Target or any of its Subsidiaries does not file any Tax Return that Target or any of its Subsidiaries is or may be subject to Taxation by such jurisdiction.

(c) All Taxes that Target or any of its Subsidiaries is or was required to withhold or collect in connection with any amount paid or owing to any employee, independent contractor, shareholder, nonresident, creditor or other third party have been duly withheld or collected and have been paid, to the extent required, to the proper Governmental Authority or other Person. All Tax information reporting requirements of or with respect to Target or any of its Subsidiaries have been satisfied in full.

(d) No Tax audit or other Tax proceeding is pending or being conducted or is, to Target's Knowledge, threatened against Target or any of its Subsidiaries.

(e) Neither Target nor any of its Subsidiaries has in effect any waiver of any statute of limitations regarding any Tax, agreed to any extension of time regarding the assessment of any Tax deficiency or granted any power of attorney that is currently in force with respect to any matter relating to any Tax.

(f) The unpaid Taxes of Target or any of its Subsidiaries did not, as of the Interim Balance Sheet Date, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes) set forth on the Interim Balance Sheet.

(g) Neither Target nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing as a result of any: (1) change in method of accounting for a Taxable period ending on or before the Closing; (2) "closing agreement" as described in section 7121 of the Code or other agreement with a Governmental Authority executed on or before the closing; (3) intercompany transaction or excess loss account described in Treasury Regulations under section 1502 of the Code; (4) installment sale or open transaction disposition made on or before the Closing; or (5) prepaid amount received on or before the Closing.

(h) Neither Target nor any of its Subsidiaries or any predecessor thereof has been a member of a group with which it has filed or been included in a combined, consolidated or unitary income Tax Return, other than the group in which it is currently a member. Neither Target nor any of its Subsidiaries has been a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar contract that includes any Person other than Target or any of its

Subsidiaries. Neither Target nor any of its Subsidiaries or any predecessor thereof is liable for any Tax of any taxpayer other than Target or any of its Subsidiaries under Treasury Regulations section 1.1502, as a transferee or successor, by contract or otherwise, for any Taxable period beginning before the Closing. After the Closing, neither Target nor any of its Subsidiaries nor any predecessor of any of them will be bound by or have any liability under any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar contract, including for any amount due with respect to any period ending on or before the Closing.

(i) Target and each of its Subsidiaries has disclosed on all applicable Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of section 6662 of the Code. Neither Target nor any of its Subsidiaries has engaged in any “listed transaction” within the meaning of Treasury Regulations section 1.6011-4(b)(2) or any predecessor regulation, and Target and each of its Subsidiaries has properly disclosed in its Tax Returns all “reportable transactions” within the meaning of Treasury Regulations section 1.6011-4(b)(1), any predecessor regulation or any similar provision of any applicable law.

(j) There is no unsatisfied liability for any Tax with respect to any notice of deficiency or similar document received by Target or any of its Subsidiaries with respect to any Tax, other than any liability for any Tax asserted under any such notice of deficiency or similar document which is being contested in good faith and with respect to which adequate reserves for payment have been established.

(k) Nether Target nor any of its Subsidiaries has made any distribution of stock of any “controlled corporation” as such term is defined in section 355(a)(1) of the Code or has any liability for any Tax as a result of any such distribution, and the transactions contemplated hereby will not result in any such Tax.

(l) Neither Target nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of section 897(c) of the Code.

3.10 **Litigation.** Except as set forth in Schedule 3.10: (i) there are no Proceedings, whether or not commenced, brought, conducted, pending or heard by or before, or otherwise involving, any Governmental Authority or, to Target’s Knowledge, threatened, affecting Target or any of its Subsidiaries or their respective assets, business or activities, and (ii) neither Target nor any of its Subsidiaries is subject to any Order. Neither Target nor any of its Subsidiaries is in default or other violation with respect to any Order.

### 3.11 **Contracts.**

(a) Schedule 3.11 lists the following Contracts to which Target or any of its Subsidiaries is a party (each Contract so listed or required to be so listed being a “*Major Contract*”), and each Major Contract is listed under a heading in such Schedule that corresponds with the applicable clause among the following to which such Major Contract relates:

- (i) each Contract regarding any severance or change of control;
- (ii) each covenant not to compete that restricts in any material respect the operation of the business of Target or any of its Subsidiaries as presently conducted;



(iii) each operating lease (as lessor or lessee) of tangible personal property (other than any such lease calling for payments of less than \$5,000 per year);

(iv) each Contract to pay or receive any royalty or license fee or to license (either as licensor or licensee) any Intellectual Property (other than any non exclusive license for the use of any commercially available off the shelf software which was entered into in the Ordinary Course of Business of Target or any of its Subsidiaries);

(v) each Contract regarding any management, personal service or consulting or other similar type of Contract (other than those that are or on the Closing will be terminable at will or upon not more than 30 days' notice by Target or any of its Subsidiaries without any Liability to Target or any of its Subsidiaries);

(vi) each Contract for the purchase by Target or any of its Subsidiaries of any supply or product (except those entered into in its Ordinary Course of Business on an order by order basis where the amount thereof is less than \$50,000 per Contract);

(vii) each mortgage agreement, deed of trust, security agreement, purchase money agreement, conditional sales contract, capital lease or other similar Contract created or assumed by, or permitted to be created by written document made or accepted by Target or any of its Subsidiaries or any sale leaseback arrangement pertaining to any real property or to equipment (other than any purchase money agreement, conditional sales contract, capital lease or other similar Contract evidencing encumbrances only on tangible personal property under which there exists an aggregate future liability less than \$5,000 per Contract);

(viii) each Contract under which Target or any of its Subsidiaries is obligated to repay or has guaranteed any outstanding indebtedness for borrowed money or remains obligated to lend to or make any investment in (in the form of a loan, capital contribution or otherwise) any other Person;

(ix) each Contract under which Target or any of its Subsidiaries has advanced or loaned any other Person amounts for such Person exceeding \$1,000;

(x) each lease or sublease of Target or any of its Subsidiaries (whether as lessor or lessee) for the use or occupancy of real property (other than any lease or sublease calling for payments of less than \$5,000 per year);

(xi) each Contract requiring Target or any of its Subsidiaries to reimburse any maker of a letter of credit or banker's acceptance;

(xii) each partnership, joint venture or similar Contract;

(xiii) each Contract with any Affiliate of (A) Target or any of its Subsidiaries or (B) any officer, director, governor or manager of (or any person holding a similar position with) Target or any of its Subsidiaries;

(xiv) each Contract with any distributor or broker of any product or service offered by Target or any of its Subsidiaries;

(xv) each Contract for any advertising or promotional service or website design or hosting;

(xvi) each Contract containing any form of most favored pricing provision in favor of any supplier or customer of Target or any of its Subsidiaries;

(xvii) each Contract for the sale of any product or service offered by Target or any of its Subsidiaries that calls for performance over a period of more than six months; and

(xviii) each other Contract not entered into in the Ordinary Course of Business of Target or any of its Subsidiaries.

(b) Target has delivered to Buyer a true, correct and complete copy of each Major Contract. With respect to each Major Contract, (1) such Major Contract is legal, valid and binding, in full force and effect and enforceable (except to the extent enforceability may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar law affecting creditors' rights generally) in accordance with its terms against Target or any of its Subsidiaries and, to Target's Knowledge, against each other party thereto, (2) neither Target nor any of its Subsidiaries are and, to Target's Knowledge, no other party thereto is, in material breach of or default under such Major Contract and no party thereto has given to any other party thereto written notice alleging that such a breach or default occurred, (3) no event has occurred that (with or without the passage of time or giving of notice) would constitute a material breach or default of, or permit termination, modification, acceleration or cancellation of, such Major Contract or of any material right or liability thereunder, and (4) neither Target nor any of its Subsidiaries has waived any material right under such Major Contract.

**3.12 Tangible Assets.** Target and each of its Subsidiaries has good and marketable title to, or a valid leasehold interest in or a valid license for, each tangible asset used by it, located on any of its premises, shown on the Interim Balance Sheet or acquired by it after the Interim Balance Sheet Date, free and clear of any Liens, except for any asset disposed of in its ordinary course of business or pursuant to the Target Restructuring Plan since the Interim Balance Sheet Date or as listed in Schedule 3.12. Each such asset is free from material defects (patent and latent), has been maintained in accordance with normal applicable industry practice, is in good operating condition and repair (except normal wear and tear) and is suitable and sufficient for the purposes for which it is used.

### **3.13 Environmental Matters.**

(a) The properties, operations and activities of Target and its Subsidiaries are in compliance in all material respects with applicable Environmental Laws;

(b) Without limiting the generality of the foregoing, Target and each of its Subsidiaries have obtained and complied with, and are in compliance with, all permits, licenses and other authorizations that are required pursuant to Environmental Laws for the occupation of their facilities and the operation of their business; and a list of all such permits, licenses and other authorizations is set forth in Schedule 3.13;

(c) Neither Target nor any of its Subsidiaries has received any written or oral notice, report or other information regarding any actual or alleged violation of Environmental Laws

or any liabilities, including any investigatory, remedial or corrective obligations, relating to any of them or their facilities arising under Environmental Laws;

(d) To Target's Knowledge, neither as of this date nor at any time prior to the date hereof, has there been a release, discharge, leak, spill, deposit, or disposal of any Hazardous Materials in, on or under any property or facility owned or operated by Target or any of its Subsidiaries;

(e) To Target's Knowledge, none of the following exists at any property or facility owned or operated by Target or any of its Subsidiaries: (1) underground storage tanks, (2) asbestos-containing material in any form or condition, (3) materials or equipment containing polychlorinated biphenyls, (4) toxic mold; (5) urea formaldehyde or (6) landfills, surface impoundments, or disposal areas.

(f) Neither Target nor any of its Subsidiaries has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, manufactured, distributed, or released any substance, including without limitation any hazardous substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) so as to give rise to any current or future liabilities, including any liability for fines, penalties, response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney's fees, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Solid Waste Disposal Act, as amended or any other Environmental Laws;

(g) Neither this Agreement nor the consummation of the transactions that are the subject of this Agreement will result in any obligations for site investigation or cleanup, or notification to or consent of government agencies or third parties, pursuant to any of the so-called "transaction-triggered" or "responsible property transfer" Environmental Laws.

(h) Neither Target nor any of its Subsidiaries has designed, manufactured, sold, marketed, installed, or distributed products or other items containing asbestos and none of such entities is or will become subject to any liabilities relating to asbestos.

(i) Neither Target nor any of its Subsidiaries has assumed, or otherwise become subject to, any Liability, including without limitation any obligation related to any cleanup, corrective, removal, remedial action, of any other Person relating to Environmental Laws.

(j) No facts, events or conditions relating to the past or present facilities, properties or operations of Target or any of its Subsidiaries will prevent, hinder or limit continued compliance with Environmental Laws, give rise to any investigatory, cleanup, removal, remedial or corrective action obligations pursuant to Environmental Laws, or give rise to any other liabilities pursuant to Environmental Laws, including without limitation any relating to on-site or off-site releases or threatened releases of hazardous materials, substances or wastes, personal injury, property damage or natural resources damage.

(k) Target and each of its Subsidiaries have furnished to Buyer all environmental audits, reports studies, assessments, investigations, sampling results and other material environmental documents relating to Target's and each of its Subsidiaries' past or current properties, facilities, or operations that are in their possession or under their reasonable control. In addition, Target and each of its Subsidiaries have disclosed all land use controls known to Target to be imposed on any property or facility as they relate to any environmental condition on any property or facility.

### 3.14 Insurance.

(a) Schedule 3.14 lists the following information with respect to each insurance policy to which Target and each of its Subsidiaries is a party or under which any of its assets, employees, officers, directors, managers or governors (in each such individual's capacity as such) is a named insured or otherwise the beneficiary of coverage thereunder (each an "Insurance Policy"): (1) the name of the insurer, the name of the policyholder and the name of each covered insured; (2) the policy number and the period of coverage; and (3) an accurate description of all retroactive premium adjustments and other loss sharing arrangements. Schedule 3.14 lists all self insurance arrangements affecting Target and each of its Subsidiaries.

(b) Except as listed in Schedule 3.14, with respect to each Insurance Policy, to Target's Knowledge: (1) such Insurance Policy is legal, valid, binding, enforceable and in full force and effect (subject to except to the extent enforceability may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar law affecting creditors' rights generally); (2) neither Target nor any of its Subsidiaries and, to Target's Knowledge, no other party to such Insurance Policy is in default or otherwise in breach thereof (including regarding payment of premiums or giving of notices); and (3) no event has occurred that (with or without the passage of time or giving of notice) would constitute such a default or breach, or permit termination, modification, cancellation or acceleration of any right or obligation under such Insurance Policy. Since their respective inceptions, Target and each of its Subsidiaries has been covered by insurance in scope and amount customary and reasonable for the businesses in which it has engaged during such period.

### 3.15 Intellectual Property.

(a) Schedule 3.15 lists all Intellectual Property of Target and each of its Subsidiaries that is registered with any Governmental Authority (or with any Person that maintains domain name registrations) and all applications for any such registration.

(b) Target and each of its Subsidiaries owns (free and clear of all Liens), or has the right to use without payment of any royalty, license fee or similar fee (other than pursuant to a Major Contract listed in Schedule 3.11), the Intellectual Property used by Target or any of its Subsidiaries in the operation of its business.

(c) Except as listed in Schedule 3.15:

(i) neither Target nor any of its Subsidiaries has received notice that any registered Intellectual Property has been declared unenforceable or otherwise invalid by any Governmental Authority and no Intellectual Property of Target or any of its Subsidiaries is or has been involved in any interference, reissuance, reexamination, invalidation, cancellation, opposition or similar Proceeding and, to Target's Knowledge, no such Proceeding is threatened;

(ii) neither Target nor any of its Subsidiaries has received any written or oral charge, complaint, claim, demand or notice since January 1, 2006, alleging that any use, sale or offer to sell any good or service of Target or any of its Subsidiaries interferes with, infringes upon, misappropriates or violates any Intellectual Property right of any other Person, including any claim that Target or any of its Subsidiaries must license or refrain from using any Intellectual Property right

of any other Person or any offer by any other Person to license any Intellectual Property right of any other Person; and

(iii) neither Target nor any of its Subsidiaries is interfering with, infringing upon, misappropriating or violating the Intellectual Property of any other Person, and, to Target's Knowledge, no other Person is interfering with, infringing upon, misappropriating or violating the Intellectual Property of Target or any of its Subsidiaries.

(d) With respect to each issued or registered item of Intellectual Property, such Intellectual Property is: (1) in compliance with all applicable legal requirements (including: payment of filing, examination and maintenance fees; proofs of working or use; post registration filing of affidavits of use; and incontestability and renewal applications); (2) to Target's Knowledge, valid and enforceable; and (3) not subject to any maintenance fee, Tax or action that is due within 90 days after the Closing.

(e) All products and other materials made, used or sold under any registered patent of Target or any of its Subsidiaries have been marked with the proper patent notice. All services, products and other materials containing any trademark, service mark, trade name or service name owned by Target or any of its Subsidiaries bear the proper registration notice where permitted by applicable law. All works encompassed or otherwise covered by any copyright of Target or any of its Subsidiaries have been marked with the proper copyright notice.

(f) With respect to each material trade secret of Target or any of its Subsidiaries (including each item of Intellectual Property that such entity regards as a material trade secret): (1) the documentation relating to such material trade secret is reasonably current, accurate in all material respects and is reasonably sufficient in detail and content to identify and explain it and to allow its use without reliance on the knowledge or memory of any individual; (2) such entity has taken reasonable precautions to protect the secrecy, confidentiality and value of such material trade secret; and (3) to Target's Knowledge, such material trade secret has not been used, divulged or misappropriated for the benefit of any Person to the detriment of Target or any of its Subsidiaries.

### **3.16 Employee Benefits.**

(a) Schedule 3.16 lists all Company Plans. Each (if any) Company Plan that is wholly or partially self insured by Target or any of its Subsidiaries or any ERISA Affiliate and the name of each self insurer is specifically identified as such in Schedule 3.16.

(b) Except as listed in Schedule 3.16: (1) each Company Plan (including each related trust, insurance Contract or fund) is in compliance in all material respects in form and operation with all applicable requirements of ERISA, the Code and any other Applicable Law (except for the adoption of any required amendment for which the remedial amendment period has not expired and does not expire on or before the Closing); (2) each Company Plan has been administered in accordance with its Plan documents; (3) there has been no breach of fiduciary duty, prohibited transaction (within the meaning of section 406 of ERISA and 4975 of the Code) or other event with respect to a Company Plan which could result in an excise Tax or other claim or Liability against or with respect to Target or any of its Subsidiaries, Company Plan or fiduciary of any Company Plan; (4) each requirement of section 4980B of the Code and parts 6 and 7 of Subtitle B of Title I of ERISA (including any provision of any such statute relating to COBRA continuation of health coverage) and

each similar requirement under any Applicable Law relating to continuation of any Welfare Plan benefit, has been satisfied with respect to each Company Plan that is subject to any such requirement; and (5) no filing has been made or is currently pending with respect to any Company Plan under any voluntary compliance program of the IRS or the U.S. Department of Labor.

(c) Except as listed in Schedule 3.16(c), each Qualified Company Plan is in fact qualified under section 401(a) of the Code in form and operation, and each such Qualified Company Plan either (1) has received a current favorable determination letter from the IRS regarding such qualified status, (2) has remaining a period of time under the Code or applicable Treasury Regulations or IRS pronouncements in which to receive, and make any amendments necessary to obtain, such a letter from the IRS or (3) is a prototype or volume submitter plan entitled, under applicable IRS guidance, to rely on the favorable opinion or advisory letter issued by the IRS to the sponsor of such prototype or volume submitter plan, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of such Qualified Company Plan.

(d) Target, each of its Subsidiaries and each ERISA Affiliate has made on a timely basis all contributions and payments required to be made pursuant to the terms of each Company Plan, the Code, ERISA or other Applicable Law with respect to all periods ending on or before the Closing.

(e) Each Company Plan that is a Pension Plan or Welfare Plan is in compliance with the applicable requirements for reporting and disclosure to participants under ERISA with respect to such Company Plan, and all required annual returns and other reports for each such Company Plan have been filed on a timely basis with the IRS, U.S. Department of Labor, PBGC and each other applicable Governmental Authority.

(f) Except as listed in Schedule 3.16(f), at no time during the six calendar years preceding the calendar year in which the Effective Time occurs has Target or any of its Subsidiaries or any ERISA Affiliate maintained or made any contribution to any Title IV Plan or Multiemployer Plan. With respect to any Company Plan that is a Title IV Plan, (1) no accumulated funding deficiency, as defined in section 302 of ERISA and section 412 of the Code, exists (whether or not waived), (2) no event or condition exists that could be deemed a Reportable Event, (3) no condition or event exists that could subject Target or any of its Subsidiaries, such Company Plan or Fiduciary of such Company Plan to any penalty or other Liability under section 4062, 4063, 4064 or 4071 of ERISA and (4) the assets of such Company Plan are equal to or greater than the total accrued Liabilities of such Company Plan, whether or not vested, determined on a termination basis.

(g) No Company Plan provides any health, dental, life insurance or similar welfare benefit to any employee of Target or any of its Subsidiaries, or any dependent of such employee, following termination of such employee's employment, except as may be required by section 4980B of the Code or any similar state law.

(h) For each Company Plan, Target has furnished to Buyer a true, correct and complete copy of all of the following (in each case if required by such Company Plan or Applicable Law or if such item otherwise exists): (1) current Plan documents and amendments thereto; (2) related trust agreements, insurance Contracts or other funding arrangements; (3) current Contracts with investment managers, recordkeepers or other service providers; (4) current summary plan descriptions and summaries of material modifications; (5) most recent annual reports (Form 5500

series); (6) most recent actuarial valuation report; and (7) most recent IRS determination letter. Schedule 3.16(h) contains a true, correct and complete summary of all material terms of each (if any) Company Plan that does not have written Plan documents.

(i) No representation or other statement has been made to any Person with respect to any Company Plan that would entitle any employee or dependent to any benefit greater than or in addition to the benefits provided by the actual terms of any Company Plan, including as to any post retirement health or death benefit. No representation or other statement has been made to any employee or dependent that any new Plan may or will be established.

(j) No employee of Target or any of its Subsidiaries is a party to any employment agreement or other Contract with Target or any of its Subsidiaries that entitles such employee to compensation or other consideration or any benefit or increased benefit under any Company Plan upon or as a result of the consummation of the transactions contemplated herein. Consummation of the transactions contemplated herein will not result in the payment or series of payments by Target or any of its Subsidiaries to any Person of an “excess parachute payment,” within the meaning of section 280G of the Code, (or the grossing up of such a payment for Taxes) or any other payment that would not be deductible under section 280G or section 162 of the Code.

(k) Schedule 3.16(k) lists each Company Plan that is or has ever been a “nonqualified deferred compensation plan,” within the meaning of section 409A of the Code and the applicable Treasury Regulations and other guidance issued by any Governmental Authority. Each such Company Plan at all times since January 1, 2005 has satisfied the requirements of section 409A of the Code and such Treasury Regulations and other guidance and has been operated in accordance with such requirements. No participant in such a Plan will incur any Tax on any benefit under such Plan before the date as of which such benefit is actually paid to such participant.

(l) Except as listed in Schedule 3.16(l), neither Target nor any of its Subsidiaries is bound by any collective bargaining agreement to maintain any Plan.

(m) There is no Proceeding pending or, to Target’s Knowledge, threatened with respect to any Company Plan, other than routine claims for benefits

**3.17 Employees and Labor Relationships.** As of the date hereof, neither Target nor any of its Subsidiaries is a party to or is bound by any collective bargaining agreement or other similar Contract with any labor union representing employees of Target or any of its Subsidiaries. No labor strike, lockout or material labor dispute or work stoppage has occurred or, to Target’s Knowledge, has been threatened through the date of this Agreement with respect to employees of Target or any of its Subsidiaries. To Target’s Knowledge, no union organizing campaign exists or has occurred through the date of this Agreement with respect to employees of Target or any of its Subsidiaries.

**3.18 Inventory.** With respect to the inventory of Target and each of its Subsidiaries (a) all of such inventory is merchantable and fit for the purpose for which it was procured or produced, (b) all of such inventory other than written off inventory, except to the extent of reserves shown on the face of the Interim Balance Sheet (rather than any notes thereto), consists of a quality and quantity usable and salable in its Ordinary Course of Business, (c) none of such inventory is slow moving, obsolete, damaged or defective, (d) the quantities of each item of such inventory are not excessive and are reasonable in the present circumstances of Target and its Subsidiaries, (e) all of such

inventory not written off has been priced at the lower of cost or net realizable value on a first in, first out basis, except in each case subject to the reserve shown on the face of the Interim Balance Sheet (rather than in any notes thereto) as adjusted for the passage of time through Closing in accordance with the past custom and practice of Target and its Subsidiaries and (f) none of such inventory is on consignment.

**3.19 Product Warranties.** To Target's Knowledge, each product manufactured, sold, leased or delivered by Target or any of its Subsidiaries is in material conformance with all applicable contractual obligations, including all applicable express and implied warranties. To Target's Knowledge, neither Target nor any of its Subsidiaries has any Liability for replacement or repair thereof or other damages in connection therewith, subject only to the reserve for product warranty claims which have not been material. Schedule 3.19 contains copies of the standard terms and conditions of sale and lease for Target and each of its Subsidiaries (including applicable guaranty, warranty and indemnity provisions). Except as otherwise disclosed in Schedule 3.19, no product manufactured, sold, leased or delivered by Target or any of its Subsidiaries is subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale and lease shown in such Schedule 3.19.

**3.20 Product Liability.** No product liability claim has been made against Target or any of its Subsidiaries and there are no Proceedings giving rise to any Liability arising out of, relating to or resulting from any injury to any individual or property as a result of the ownership, possession or use of any product manufactured, sold, leased or distributed by Target or any of its Subsidiaries. Neither Target nor any of its Subsidiaries has received written notice as to any claim for personal injury or death, any claim for property, economic, punitive or exemplary damages, any claim for contribution or indemnification or any claim for injunctive relief, in each case in connection with any product manufactured, sold, leased or distributed by Target or any of its Subsidiaries. Through the date of this Agreement, there has not been any material product recall (voluntary, involuntary or otherwise) by Target or any of its Subsidiaries.

**3.21 Suppliers and Customers.** Schedule 3.21 lists the five largest suppliers by dollar volume (listing dollar volume for each) of products and services to Target and its Subsidiaries and the five largest customers by dollar volume (listing dollar volume for each) of products and services of Target and its Subsidiaries, taken as a whole, in each case for the 12 month period prior to the date of this Agreement. Except as listed in Schedule 3.21, neither Target nor any of its Subsidiaries has received any written communication indicating that, and, to Target's Knowledge, there are no circumstances indicating that, any such supplier or customer is terminating or materially reducing or making any materially adverse change in, or desires or intends to terminate or materially reduce or make any materially adverse change in, any aspect of its business relationship with Target or any of its Subsidiaries. To Target's Knowledge, the consummation of the transactions contemplated herein will not adversely affect any of Target's or any of its Subsidiaries' business relationship with any such supplier or customer. Schedule 3.21 lists each trade allowance, trade in, billback, rebate, discount or similar program of or for Target or any of its Subsidiaries for the benefit of or with any supplier or customer of Target or any of its Subsidiaries.

**3.22 Real Property.** Schedule 3.22 of the Disclosure Schedule lists all real property leased by Target or any of its Subsidiaries (collectively, the "*Leased Real Property*"). Neither Target nor any Subsidiary owns any real property.



3.23 **Brokers' Fees.** Except as set forth on Schedule 3.23, neither Target nor any of its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

Article 4. **Buyer's and Merger Sub's Representations and Warranties.** Each of Buyer and Merger Sub represents and warrants to Target that the statements contained in this Article 4 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 4), except as set forth in the Disclosure Schedules. The Disclosure Schedules will be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Article 4.

4.1 **Organization.** Each of Buyer and Merger Sub is a corporation (or other entity) duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation (or other formation).

4.2 **Authorization of Transaction.** Each of Buyer and Merger Sub has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of each of Buyer and Merger Sub, enforceable in accordance with its terms and conditions.

4.3 **Non-contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which either Buyer or Merger Sub is subject or any provision of the charter, bylaws, or other governing documents of either Buyer or Merger Sub or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which either Buyer or Merger Sub is a party or by which it is bound or to which any of its assets is subject.

4.4 **Brokers' Fees.** Neither Buyer nor Merger Sub has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Target or any of its Subsidiaries could become liable or obligated.

Article 5. **Covenants.** The Parties agree as follows with respect to the period from and after the execution of this Agreement.

5.1 **Certain Actions to Close Transactions.** Target will use reasonable best efforts to give any required notices to other Persons, to obtain each Required Consent before Closing and to provide Buyer with any information required to obtain merger control authorizations, and Buyer will cooperate with Target in all reasonable respects in connection therewith; provided, however, that neither Party is required to make any payment to any other Person regarding any Required Consent, other than fees of legal counsel in connection therewith.

5.2 **Pre-Closing Conduct of Business.** Except as expressly contemplated herein or as otherwise consented to in writing by Buyer (which consent will not be unreasonably withheld), from

the date hereof through Closing, Target will (and will cause its Subsidiaries to) conduct its business in its Ordinary Course of Business and will not to do any of the following:

(a) (i) issue or otherwise allow to become outstanding or acquire or pledge or otherwise encumber any equity interest or other security of Target or any of its Subsidiaries or right (including any option, warrant, put or call) to any such equity interest or other security, (ii) declare, set aside or pay any dividend on, or make any other distribution in respect of, any of its equity interests or other securities, (iii) split, combine or reclassify any of its equity interests or issue or authorize the issuance of any other security in respect of, in lieu of or in substitution for any of its equity interests or other securities or make any other change to its capital structure or (iv) purchase, redeem or otherwise acquire any equity interest or any other security of Target or any of its Subsidiaries or any right, warrant or option to acquire any such equity interest or other security;

(b) (i) except for sales of inventory in its Ordinary Course of Business, make any sale, lease to any other Person, license to any other Person or other disposition of any material asset, (ii) fail to preserve and maintain all of the Leased Real Property in substantially the same condition as existed on the date hereof, ordinary wear and tear excepted, (iii) erect any new improvement on any of the Leased Real Property, (iv) make any capital expenditure or purchase or otherwise acquire any material asset (other than purchases of inventory in its Ordinary Course of Business and capital expenditures that do not exceed \$50,000 (individually or in the aggregate)); (v) acquire by merging with, or by purchasing a substantial portion of the stock or assets of, or by any other manner, any business or any Person or division thereof; (vi) disclose any confidential, proprietary or non public information (other than as is reasonably protected under a customary non disclosure Contract); or (vii) adopt a plan of liquidation, dissolution, merger, consolidation, statutory share exchange, restructuring, recapitalization or reorganization, provided that Target may implement the Target Restructuring Plan;

(c) grant any Lien on any material asset;

(d) (i) become a guarantor with respect to any obligation of any other Person, (ii) assume or otherwise become obligated for any obligation of any other Person for borrowed money; or (ii) agree to maintain the financial condition of any other Person;

(e) (i) incur any indebtedness for borrowed money, (ii) make any loan, advance or capital contribution to, or investment in, any other Person or (iii) make or pledge to make any charitable or other capital contribution;

(f) except in its Ordinary Course of Business, amend or terminate in any respect that is material and adverse to the Target and its Subsidiaries, taken as a whole, any Major Contract;

(g) (i) fail to prepare and timely file all Tax Returns with respect to Target or any of its Subsidiaries required to be filed before Closing or timely withhold and remit any employment Taxes with respect to Target or any of its Subsidiaries, (ii) file any amended Tax Return, or (iii) make or change any election with respect to Taxes;

(h) fail to use reasonable best efforts to (i) keep intact the business organization of Target or any of its Subsidiaries, (ii) keep available to Target and its Subsidiaries present officer and management level employees of such entity or (iii) preserve, and prevent any degradation in, Target's

or any of its Subsidiaries' relationships with material suppliers, customers and others having material business relations with Target or any of its Subsidiaries;

(i) amend or change, or authorize any amendment or change to, any organizational documents;

(j) enter into any contract, or agree or commit (binding or otherwise), to do any of the foregoing.

### 5.3 Access to Information.

(a) Pre Closing Access for Buyer. From the date hereof through Closing, Target will use best efforts to cause Buyer and Buyer's representatives (including legal counsel and accountants) to have full access at all reasonable times, and in a manner so as not to unreasonably interfere with the normal business operations of Target, to all properties, personnel, books, records, Contracts and other documents of or pertaining Target or any of its Subsidiaries.

(b) Post Closing Access for Target. For a one-year period after Closing, subject to Buyer's reasonable confidentiality precautions, Buyer will, during normal business hours and upon reasonable notice from Stockholder Representative: (i) cause Stockholder Representative's agents to have reasonable access to the books and records of Target, and to the personnel responsible for preparing and maintaining such books and records, in each case to the extent necessary to (A) defend or pursue any Proceeding, (B) defend or pursue indemnification matters hereunder, (C) prepare or audit financial statements, or (D) prepare or file Tax Returns; and (ii) permit Stockholder Representative's agents to make copies of such books and records for the foregoing purposes, at Target's expense.

5.4 **Further Assurances.** If after Closing any further action is necessary to carry out any purpose of this Agreement, then each Party will take such further action (including the execution and delivery of further documents) as the other Party reasonably requests to carry out such purpose. The foregoing will be at the expense of such requesting Party, except to the extent such requesting Party is entitled to indemnification therefor or to the extent this Agreement otherwise allocates such expense to any other Party.

### 5.5 Confidentiality and Publicity.

(a) Confidentiality Agreement. Subject to the other terms of this Section 5.5, the Confidentiality Agreement between Buyer and Target, dated July 3, 2007 (the "*Confidentiality Agreement*"), will remain in full force and effect pursuant to its terms.

(b) Confidentiality. At all times after Closing, Target will, and will cause its Affiliates to, keep confidential and not disclose and not use, any confidential, proprietary or other non public information of Target or any of its Subsidiaries.

(c) Publicity. Except as stated in this Section 5.5(c), each Party will not, and each Party will cause each of its Affiliates not to, make any public release or announcement regarding this Agreement or any of the transactions contemplated herein without the prior written approval thereof of each Party (which will not be unreasonably withheld). Buyer shall be permitted to make a public

disclosure of the transactions contemplated herein upon the execution of this Agreement and thereafter.

(d) **Certain Permitted Disclosures.** Notwithstanding the foregoing, nothing in this Section 5.5 will prevent any of the following at any time:

(i) a Party or any of its Affiliates from disclosing any information to the extent required under Applicable Law;

(ii) before Closing, Target communicating with any of its suppliers, customers or employees on a need to know basis regarding the transactions contemplated herein,

(iii) before Closing, Buyer communicating with any of Target's suppliers, customers or employees regarding post-Closing relationships;

(iv) a Party or any of its Affiliates making a statement or disclosure (A) as part of its or any of its Affiliate's financial statements or Tax Returns or (B) to the extent reasonably necessary to enforce or comply with this Agreement; or

(v) a Party making a statement or disclosure to such Party's (or any of its Affiliate's) paid legal, accounting and financial advisers to the extent reasonably necessary for any such adviser to perform its paid legal, accounting and financial services, respectively, for such Party (or such Affiliate).

#### **5.6 Employee Matters.**

(a) **Employee Retention.** Nothing in this Agreement will obligate Buyer or Surviving Corporation to continue the employment of any individual for any specific period after Closing (including any employee on medical, disability, family or other leave of absence)

(b) **Employee Benefits.** As soon as practicable, Buyer will, or will cause one or more of Buyer's Affiliates to, provide to each employee of the Surviving Company employee benefits that are at least comparable in all material respects to the employee benefits received by other comparable employees of Buyer and its Affiliates.

**5.7 Merger Control Filings and Authorizations.** Buyer and Target shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under any applicable merger control regulation. Buyer and Target shall promptly inform the other party of any communication received by such party from any Governmental Authority with respect to any filing pursuant to merger control regulations. Buyer and Target shall use their respective reasonable best efforts to comply as expeditiously as possible with all requests of any Governmental Authority for additional information and documents, including, without limitation, information or documents requested in connection with merger control regulations. Buyer shall pay all filing fees in connection with merger control regulations.

## 5.8 Certain Tax Matters.

(a) Payment of Taxes and Filing Responsibility. Target will prepare and timely file (or cause to be prepared and timely filed) all (1) Tax Returns with respect to Target and any of its Subsidiaries required to be filed on or before the Closing Date (after taking into account extensions therefor) and (2) consolidated, combined or unitary Tax Returns that include Target and any of its Subsidiaries that are required to be filed before, on or after the Closing Date. Buyer will prepare and timely file (or cause to be prepared and timely filed) all Tax Returns that Target is not obligated to file (or cause to be filed) pursuant to this Section 5.8(a). Target will satisfy (or cause to be satisfied) in full when due all Taxes with respect to Target and any of its Subsidiaries with respect to any Pre Closing Tax Period (all of such Taxes being the “*Pre Closing Taxes*”). Buyer will satisfy (or cause to be satisfied) in full when due all Tax Liabilities with respect to any period that is not a Pre Closing Tax Period. If Buyer is required under this Section 5.8(a) to file a Tax Return that involves Pre-Closing Taxes, then no later than 10 Business Days before the filing of any such Tax Return, Target will pay to Buyer an amount equal to the amount of Taxes shown due on such Tax Return for which Target is obligated with respect to such Tax Return.

(b) Cooperation. Each Party will, and each Party will cause its applicable Affiliates to, cooperate in all reasonable respects with respect to Tax matters and provide one another with such information as is reasonably requested to enable the requesting Party to complete and file all Tax Returns which it may be required to file (or cause to be filed) with respect to Target or any of its Subsidiaries, to respond to any Tax audit, inquiry or other Tax Proceeding and to otherwise satisfy any Tax requirement.

(c) Transfer Taxes. Notwithstanding Section 5.8(a), Target will pay all Transfer Taxes, and Target and Buyer will cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of Applicable Law relating thereto.

5.9 **Notice of Developments.** Target will give prompt written notice to Buyer of any material incident, condition, change, effect or circumstance of which Target obtains Knowledge causing or constituting a breach of any of Target’s (or its Subsidiaries’ representations or warranties herein had such representation or warranty been made on the date of such incident, condition, change, effect or circumstance or the date of its discovery. Notwithstanding the foregoing, Target’s failure to provide such notice will not entitle Buyer to, or create, any right (including right to indemnification), other than any right, if any, that would be available to Buyer upon the occurrence or non occurrence of the incident, condition, change, effect or circumstance that would have been the subject of such notice.

5.10 **Section 280G.** Target will take all action necessary to solicit stockholder approval under section 280G(b)(5)(A)(ii) of any amount that might otherwise be considered to be, in the absence of such stockholder approval, an “excess parachute payment” within the meaning of section 280G of the Code with respect to the transactions contemplated herein.

5.11 **Insurance and Insurance Proceeds.** Target will keep, or cause to be kept, all Insurance Policies of Target and any of its Subsidiaries or substantially equivalent replacements therefor, in full force and effect from the date hereof through the Effective Time.

5.12 **Forgiveness of Working Capital Loan.** The Parties agree that, notwithstanding any contrary term in the Working Capital Loan documents, with respect to the Working Capital Loan:

(a) If the Closing occurs prior to July 30, 2008, then the accrued interest and principal amount outstanding under the Working Capital Loan shall be forgiven at Closing.

(b) If the Closing has not occurred prior to July 30, 2008 and the failure of the Closing to occur by such date is attributable to the actions of Target or its Subsidiaries, then the accrued interest and principal amount of the Working Capital Loan shall mature and be payable on the date that is twenty-four months after the date of the closing of the Working Capital Loan.

(c) If the Closing has not occurred prior to July 30, 2008 and the failure of the Closing to occur by such date is attributable to the actions of Buyer or its Subsidiaries, then, without prejudice to Target's right to seek remedy for Buyer's breach of this Agreement, the accrued interest and principal amount of the Working Capital Loan shall be forgiven on July 30, 2008. For the avoidance of doubt, if Buyer decides not to consummate the transactions contemplated by this Agreement based upon its due diligence review of Target and its Subsidiaries, such non-consummation shall be attributable to Buyer.

(d) If the Closing has not occurred prior to July 30, 2008 and the failure of the Closing to occur by such date is not attributable to the actions of either Buyer (and its Subsidiaries) or Target (and its Subsidiaries), then one-half of the accrued interest and principal amount of the Working Capital Loan shall mature and be payable on the date that is twenty-four months after the date of the closing of the Working Capital Loan and the balance of the accrued interest and principal amount of the Working Capital Loan shall be forgiven on July 30, 2008.

5.13 **No Shop.** Throughout the period that begins on the date hereof and ends upon the earlier of the Effective Time or the termination of this Agreement pursuant to Article 7, Target will not, and Target will cause each of its Subsidiaries and each Affiliate and other representative or agent of Target or any of its Subsidiaries not to, directly or indirectly, solicit, initiate, seek or encourage any inquiry, proposal or offer from, furnish any information to or participate in any discussion or negotiation with any Person (other than Buyer or any Person on Buyer's behalf) regarding any acquisition of the capital stock, assets or business, in whole or in part (by purchase, merger, tender offer, statutory share exchange, joint venture or otherwise) of Target or any of its Subsidiaries, except sales of inventory in the Ordinary Course of Business. Target will, and Target will cause each of its Subsidiaries and each Affiliate and other representative or agent of Target or any of its Subsidiaries to, immediately terminate all such discussions or negotiations that may be in progress on the date hereof. Target will cause each of Matrix Partners VII, LP; Weston & Co LLC; Austin Ventures VIII, LP; GTI Ventures LLC; GTIPS I, LLC; RRE Ventures III-A LP; RRE Ventures III LP and RRE Ventures Fund LP to sign a separate no-shop agreement substantially in the form attached as Exhibit B.

#### Article 6. **Conditions to Obligation to Close.**

6.1 **Conditions to Obligation of Target.** The obligations of Target to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Target):

(a) Representations and Warranties. Each of the representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects both as of the date of this Agreement and as of the Closing Date as though made on and as of such date and as though the Closing Date were substituted for the date of this Agreement throughout Article 3 (other than such representations and warranties as are made of another date, which shall be so true and correct as of such date).

(b) Performance. Buyer shall have, in all material respects, performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be so performed or complied with by Buyer at or prior to the Effective Time.

(c) Merger Control. All applicable waiting periods for required merger control filings shall have expired or been terminated and all other merger control requirements shall have been satisfied.

(d) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect.

(e) No Action. No action shall have been taken nor any statute, rule or regulation shall have been enacted by any Governmental Authority that makes the consummation of the transactions contemplated hereby illegal.

**6.2 Conditions to Obligation of Buyer and Merger Sub to Close.** The obligations of Buyer and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Buyer and Merger Sub).

(a) Representations and Warranties. Each of the representations and warranties of Target set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement (other than such representations and warranties as are made of another date, which shall be so true and correct as of such date). In addition, prior to the Closing Date, Target will provide Buyer with a supplement to the Disclosure Schedule. As amended and supplemented by such supplement to the Disclosure Schedule, the representations and warranties of Target set forth in this Agreement shall be true and correct in all material respects as of the Closing Date (other than (other than such representations and warranties as are made of another date, which shall be so true and correct as of such date.)

(b) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect to Target.

(c) Performance. Target shall have, in all material respects, performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be so performed or complied with by Target at or prior to the Closing.

(d) Officer's Certificate. Target shall have delivered to Buyer a certificate, dated as of the Closing Date, executed on its behalf by an executive officer, certifying the fulfillment of the conditions specified in Sections 6.2(a), 6.2(b) and 6.2(c).

(e) Merger Control. All applicable waiting periods for required merger control filings shall have expired or been terminated and all other merger control requirements shall have been satisfied.

(f) Stockholder Approval. The approval of this Agreement and the Merger by the Target Stockholders representing no fewer than 85% of Target's outstanding voting power, including the approval of Matrix Partners VII, LP; Weston & Co LLC; Austin Ventures VIII, LP; GTI Ventures LLC; GTIPS I, LLC; RRE Ventures III-A LP; RRE Ventures III LP; RRE Ventures Fund LP; Joe Lamoreaux and William J. Rabb, shall have been obtained, along with any other voting requirements under the Target's certificate of incorporation, and such approvals shall remain in full force and effect.

(g) No Indebtedness. Buyer shall have received appropriate payoff letters and forms of Lien releases with respect to all Indebtedness, including pursuant to the Convertible Note Purchase Agreement.

(h) Termination of Guarantees. Target shall notify each of Digi-Key Corp. and Yes Logistics Corp. that any guarantees previously in effect with each entity have been terminated.

(i) No Options or Warrants. Target shall have no outstanding options or warrants with respect to Target Shares.

(j) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect.

(k) Comerica Loan Agreement and Comerica Warrant. Target shall have not drawn any funds under that certain Loan and Security Agreement between Target and Comerica Bank, dated as of February 14, 2008 and Target shall have issued a notice to Comerica Bank at least 20 days prior to the Closing stating that the Comerica warrant will not be assumed by Buyer, in accordance with that certain Warrant to Purchase Stock issued to Comerica Bank as of February 14, 2008.

(l) Receipt of Consents. Buyer shall have received evidence of the delivery of the Required Consents.

(m) Termination of Plans. Target's 401(k) Plan shall have been terminated and Target shall provide Buyer with a certificate verifying that the following procedures related to the 401(k) Plan have been completed through termination: (i) all contributions, matches, loan payments are deposited into employee accounts, (ii) all participants are fully vested and (iii) corporate resolutions terminating the 401(k) Plan have been recorded in the Target's minute book.

(n) Vacation and Bonus Pay. Target shall have paid out all earned employee vacation time and shall have properly accrued all unpaid bonuses.

(o) No Action. No action shall have been taken nor any statute, rule or regulation shall have been enacted by any Governmental Authority that makes the consummation of the transactions contemplated hereby illegal.



(p) Opinion. Buyer shall have received an opinion from DLA Piper US LLP, in form and substance reasonably acceptable to Buyer.

(q) Secretary's Certificate. Target shall have delivered to Buyer a certificate, dated as of the Closing Date, executed on its behalf by the Secretary of Target, certifying: (i) Stockholder Approval of this Agreement and the Merger; (ii) Target's Certificate of Incorporation and Bylaws; and (iii) the name, title, incumbency and signatures of the officers authorized to execute this Agreement.

(r) Board Resignations. Buyer shall have received resignation letters effective as of the Closing Date executed and delivered by directors of Target and its Subsidiaries.

(s) Financial Statements. Target shall have delivered to Buyer audited financial statements of Target for the fiscal year ended December 31, 2007 prepared in accordance with GAAP and unaudited financial statements for the three-month period ended March 31, 2008 prepared in accordance with GAAP, except that the March financial statements will be subject to normal year end adjustments and will not have notes included therewith.

(t) Non-Competition. Jamie Dunn and Sriram Chandrasekaran, as employees of Target, shall have executed agreements containing non-solicitation and non-competition covenants, which are acceptable to Buyer, and such employees shall have accepted offers of employment from Buyer, which offers will have terms consistent with those discussed by Target and Buyer and, in any event, will be no worse than what would be expected by similarly situated individuals in the industry.

## Article 7. Termination.

7.1 **Termination of Agreement**. This Agreement may be terminated before Closing as follows:

(a) the Parties may terminate this Agreement by mutual written consent at any time prior to the Effective Time;

(b) Buyer and Merger Sub may terminate this Agreement by giving written notice to Target at any time prior to the Effective Time (A) in the event Target has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Buyer or Merger Sub has notified Target of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach or (B) if the Closing shall not have occurred on or before July 30, 2008 by reason of the failure of any condition precedent under Section 6.2 hereof (unless the failure results primarily from Buyer or Merger Sub breaching any representation, warranty, or covenant contained in this Agreement), provided that Buyer has not waived such breach;

(c) Target may terminate this Agreement by giving written notice to Buyer and Merger Sub at any time prior to the Effective Time (A) in the event Buyer or Merger Sub has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Target has notified Buyer and Merger Sub of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach or (B) if the Closing shall not have occurred on or before July 30, 2008 by reason of the failure of any condition precedent under Article 6.1 hereof (unless the failure results primarily from Target breaching any representation, warranty, or covenant contained in this Agreement); or

(d) any Party may terminate this Agreement by giving written notice to the other Parties at any time after the meeting of stockholders to vote on the approval of this Agreement in the event this Agreement and the Merger fail to receive the Requisite Stockholder Approval.

**7.2 Effect of Termination.** The termination of this Agreement pursuant to Section 7 will not be deemed to release any Party from any Liability for breach of any term hereof (nor a waiver of any right in connection therewith) and will be in addition to any other right or remedy a Party has under this Agreement or otherwise. The exercise of a right of termination of this Agreement is not an election of remedies.

## Article 8. **Remedies.**

### 8.1 **Survival.**

(a) The representations and warranties and covenants of Target and its Subsidiaries, the covenants or agreements contained in any certificate delivered by or on behalf of Target pursuant to this Agreement, and the obligation of Target to indemnify the Buyer Indemnitees pursuant to this Article 8, will survive until the first anniversary of the Effective Time (the “*Survival Date*”), except that:

(i) The representations and warranties of Target and its Subsidiaries and the obligation of Target to indemnify the Buyer Indemnitees with respect to the representations and warranties set forth in Section 3.1 (Organization, Qualification, and Corporate Power), 3.2 (Capitalization), 3.4 (Authorization of Transaction), Section 3.9 (Taxes), Section 3.16 (Employee Benefits), Section 3.20 (Product Liability, and Section 3.23 (Brokers’ Fees), and any breach resulting from fraud or willful misconduct shall survive for the applicable statute of limitations; and

(ii) The representations and warranties of Target and its Subsidiaries and the obligation of Target to indemnify the Buyer Indemnitees with respect to the representations and warranties set forth in Section 3.13 (Environmental Matters) will survive until the fifth anniversary of the Effective Time.

(b) The representations and warranties of Buyer and Merger Sub will survive until Closing.

**8.2 Indemnification of Buyer Indemnitees.** Subject to the other terms of this Article 8, from and after the Effective Time, Buyer and the Surviving Corporation and their respective successors and permitted assigns, and the officers, employees, directors and stockholders of Buyer, the Surviving Corporation and their respective heirs and personal representatives (collectively, the “*Buyer Indemnitees*”), shall be indemnified by Target for the amount of any out-of-pocket losses, costs, damages, claims, fines, penalties, expenses (including reasonable fees and expenses of outside attorneys), reasonable costs of investigation (including reasonable fees and expenses of outside accountants, consultants and experts reasonably engaged), amounts paid in settlement, court costs and other expenses of litigation (collectively, “*Damages*”), actually incurred by a Buyer Indemnitee arising out of, relating to or resulting from, directly or indirectly, any:

(a) breach of any representation or warranty made by Target or any of its Subsidiaries herein;

(b) breach of any covenant or agreement of Target or any of its Subsidiaries herein;

(c) breach by Target or any of its Subsidiaries of any of covenants or agreements contained in any certificate attached hereto and delivered by or on behalf of Target pursuant to this Agreement;

(d) any pre Closing Tax of Target or any of its Subsidiaries;

(e) Proceedings listed in Schedule 3.10 or any Proceeding required to be listed in such Schedule to avoid a misrepresentation of Section 3.10; and

(f) any net wind down costs in excess of \$150,000 (in the aggregate) associated with the Target's relationship with (a) AcBel Polytechnic, Inc., (b) Speedy-Tech Enterprise Group Ltd., or (c) Huntkey Enterprise Group Ltd., or any of their respective Affiliates.

### **8.3 Limitation of Indemnification of Buyer Indemnitees.**

(a) Notwithstanding anything to the contrary in this Article 8, the Buyer Indemnitees shall not be entitled to indemnification for any Damages until the aggregate amount of the Buyer Indemnitees' Damages (including legal fees) exceeds one-half of one percent (0.5%) of the Merger Consideration (the "*Indemnity Basket*"). Once the claims for Damages exceeds the Indemnity Basket, the Buyer Indemnitees shall be indemnified for all Damages, subject to the other provisions of this Article 8.

(b) All claims for Damages made by any Buyer Indemnitee pursuant to this Article 8 shall be satisfied solely out of (i) the Indemnification Holdback or (ii) any earned Earn-out Payment.

(c) The Buyer Indemnitees' right to indemnification for any Damages shall be (i) reduced by all insurance or other third party indemnification proceeds recovered by the Buyer Indemnitees, (ii) reduced by the amount of any Tax benefit realized by, or directly or indirectly accruing to the benefit of, any Buyer Indemnitee suffering such Damages and (iii) increased by the amount of any net Tax cost incurred by any Buyer Indemnitee arising from the receipt of reimbursement payments hereunder. Buyer and the Surviving Corporation shall use reasonable best efforts to claim and recover any Damages suffered by the Buyer Indemnitees under any such insurance policies or other third-party indemnities.

(d) For purposes of this Article 8, in determining the amount of Damages arising out of, relating to or resulting from, directly or indirectly, a breach of a representation or warranty in this Agreement, all materiality qualifiers will be ignored and each such representation and warranty will be read and interpreted without regard to any materiality qualifier.

### **8.4 Notice of Claims and Procedures.**

(a) Buyer or Buyer Indemnitees will give the Stockholder Representative prompt notice of any claim for Damages, for which Buyer Indemnitees propose to demand indemnification, (1) by a Person that is not a Party (such a claim, being a "*Third Party Claim*") or (2) that does not involve a Third Party Claim, in each case specifying the amount and nature of such claim (to the

extent known) (such notice being the “*Initial Claim Notice*”). Thereafter, Buyer Indemnitees will give the Stockholder Representative, promptly after Buyer Indemnitee’s receipt thereof, copies of all documents (including court papers) received by the Buyer Indemnitees relating to any Third Party Claim. The failure to promptly give such notice or to promptly give such copies will not relieve Target of any indemnification liability hereunder, except if the Target Stockholders were prejudiced thereby, but only to the extent that the Target Stockholders demonstrate that they were prejudiced thereby.

(b) Within 30 days after receiving the Initial Claim Notice (or sooner as is reasonably necessary, in the case of a Third Person Claim), the Stockholder Representative shall give written notice to the Buyer stating whether it in good faith disputes the claim for indemnification and whether it will defend against any Third Person Claim at its own cost and expense. If the Stockholder Representative fails to give notice that it disputes an indemnification claim within 30 days after receipt of notice thereof (or sooner as is reasonably necessary, in the case of a Third Person Claim), it shall be deemed to have accepted and agreed to the claim, and the amount of indemnification to which the Buyer shall be entitled under this Article 8 shall be determined: (i) by the written agreement between the Stockholder Representative and the Buyer; (ii) by a final, non-appealable judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Stockholder Representative and the Buyer shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined.

(c) The following procedures shall apply with respect to the Third Party Claims.

(i) Buyer and Stockholder Representative will cooperate and assist in all reasonable respects regarding such Third Party Claim, including by promptly making available to such other Party (and its legal counsel and other professional advisers with a reasonable need to know) all books and records of such Person relating to such Third Party Claim, subject to reasonable confidentiality precautions.

(ii) Promptly after receiving an Initial Claim Notice with respect to a Third Party Claim, the Stockholder Representative will have the option to conduct the defense of such Third Party Claim, at the expense of the Stockholder Representative, except if (A) the aggregate amount of the potential obligations of the Buyer Indemnitees regarding such Third Party Claim exceeds the maximum indemnification obligations under this Agreement regarding such Third Party Claim, (B) there is a reasonable probability that such Third Party Claim will adversely affect the Buyer Indemnitees, other than as a result of money damages, or (C) the Stockholder Representative fails to provide the Buyer with evidence reasonably satisfactory to the Buyer that the Stockholder Representative has the financial resources to actively and diligently conduct the Defense of such Third Party Claim. To elect to conduct such Defense, the Stockholder Representative must give written notice of such election to the Buyer within 30 days (or within the shorter period, if any, during which a Defense must be commenced for the preservation of rights) after the Buyer gives the corresponding Initial Claim Notice to the Stockholder Representative (otherwise, such right to conduct such Defense will be deemed waived). If the Stockholder Representative validly makes such election, it will nonetheless lose such right to conduct such Defense if it fails to continue to actively and diligently conduct such Defense.

(iii) If the Stockholder Representative conducts the Defense of such Third Party Claim, then (A) the Buyer may participate, at its own expense (except that the Stockholder Representative will be responsible for the fees and expenses of the Buyer's counsel (but not more than one law firm per jurisdiction) if the Buyer reasonably concludes that counsel to the Stockholder Representative has a conflict of interest), in such Defense (including any Proceeding regarding such Third Party Claim) and will have the right to receive copies of all notices, pleadings or other similar submissions regarding such Defense, (B) the Stockholder Representative will keep the Buyer reasonably informed of all matters material to such Defense and Third Party Claim at all stages thereof, (C) there will be no compromise or settlement of such Third Party Claim without the consent of the Buyer (which consent will not be unreasonably withheld) and (D) the Stockholder Representative's election to conduct the Defense of such Third Party Claim will conclusively establish the applicability of the indemnification obligations under this Agreement with respect to such Third Party Claim hereunder.

(iv) If the Stockholder Representative does not have the option to conduct the Defense of such Third Party Claim or does not validly elect such option or does not preserve such option (including by failing to commence such Defense within 30 days following receipt of such Initial Claim Notice or within the shorter period, if any, during which a Defense must be commenced for the preservation of rights), then the Buyer may conduct the Defense of such Third Party Claim in any manner that the Buyer reasonably deems appropriate, with such expense qualifying as Damages (subject to the other limitations of this Article 8), and the Buyer will have the right to compromise or settle such Third Party Claim without the consent of the Stockholder Representative.

**8.5 Release of Indemnification Holdback.** On the Survival Date, Buyer shall release any amount of the Indemnification Holdback that has not previously been released to Buyer Indemnitees for indemnification under this Article 8 (the "*Holdback Payment*") for payment to the Target Stockholders in accordance with Section 2.3, provided, however, that Buyer may continue to hold back and not release the amount of any outstanding claims for Damages made pursuant to Article 8 which have not been resolved as of the Survival Date. Upon the final resolution of all such pending claims for Damages, Buyer shall release and pay to the Target Stockholders any remaining portion of the Indemnification Holdback, in accordance with Section 2.3.

#### Article 9. Miscellaneous.

**9.1 No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns; provided, however, that (i) the provisions in Article 2 above concerning payment of the Merger Consideration are intended for the benefit of Target Stockholders and (ii) the provisions in Article 8 above concerning indemnification are intended for the benefit of the individuals specified therein and their respective legal representatives.

**9.2 Entire Agreement.** This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

**9.3 Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party

may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties.

9.4 **Counterparts.** This Agreement may be executed in one or more counterparts, (including by means of facsimile), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9.5 **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

9.6 **Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) 1 business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) 1 business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) 4 business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

*If to Target, to:*

ColdWatt, Inc.  
13809 Research Blvd., Suite 475  
Austin, Texas 78750  
Facsimile: 512-439-4997  
Attention: Judd Rabb, Chief Financial Officer

with a copy to:

DLA Piper US LLP  
1221 South MoPac Expressway, Suite 400  
Austin, Texas 78746  
Facsimile: 512-457-7001  
Attention: Philip Russell

*If to Stockholder Representative:*

Global Technology Investments  
375 Park Avenue  
New York, N.Y. 10152  
Facsimile: 212-753-2888  
Attention: Michael L. Schulhof

with a copy to:

DLA Piper US LLP  
1221 South MoPac Expressway, Suite 400  
Austin, Texas 78746  
Facsimile: 512-457-7001  
Attention: Philip Russell

*If to Buyer or Merger Sub, to:*

Flextronics International USA, Inc.  
Canon's Court  
22 Victoria Street  
Hamilton HM 12  
Bermuda  
Facsimile: 441-295-9216  
Attention: Carrie Schiff, General Counsel

with a copy to:

Faegre & Benson LLP  
1900 Fifteenth Street  
Boulder, Colorado 80302  
Facsimile: 303-447-7800  
Attention: Rex O'Neal

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

**9.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (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.

**9.8 Disputes Resolution; Waiver of Jury Trial.**

(a) Except as otherwise provided in this Agreement, the following binding dispute resolution procedures shall be the exclusive means used by the parties to resolve all disputes, differences, controversies and claims arising out of or relating to the Agreement or any other aspect of the relationship between Buyer and Target, Target Stockholders, or Stockholder Representative or their respective affiliates and subsidiaries (collectively, "*Disputes*"). Any party may, by written notice to the other party, refer any Disputes for resolution in the manner set forth below.

(b) Any Disputes shall be referred to arbitration under the Commercial Arbitration Rules of the American Arbitration Association (the "AAA" or the "*Arbitration Administrator*"), including the AAA Supplementary Procedures for Large Complex Commercial Disputes, if applicable.

(c) The parties shall agree on a single arbitrator (the "*Arbitrator*"). The Arbitrator shall be a retired judge selected by the parties from a roster of arbitrators provided by the Arbitration Administrator. If the parties cannot agree on an Arbitrator within seven (7) days of delivery of the demand for arbitration ("*Demand*") (or such other time period as the parties may agree), the Arbitration Administrator shall select an independent Arbitrator.

(d) Unless otherwise mutually agreed to by the parties, the place of arbitration shall be San Jose, California, although the arbitrators may be selected from rosters outside San Jose.

(e) The Federal Arbitration Act shall govern the arbitrability of all Disputes. The Federal Rules of Civil Procedure and the Federal Rules of Evidence (the “*Federal Rules*”), to the extent not inconsistent with this Agreement, govern the conduct of the arbitration. To the extent that the Federal Arbitration Act and Federal Rules do not provide an applicable procedure, Delaware law shall govern the procedures for arbitration and enforcement of an award, and then only to the extent not inconsistent with the terms of this Section. Disputes between the parties shall be subject to arbitration notwithstanding that a party to this Agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.

(f) Unless otherwise mutually agreed to by the parties, each party shall allow and participate in discovery as follows:

(i) Non-Expert Discovery. Each party may (1) conduct three (3) non-expert depositions of no more than five (5) hours of testimony each, with any deponents employed by any party to appear for deposition in San Jose, California; (2) propound a single set of requests for production of documents containing no more than twenty (20) individual requests; (3) propound up to twenty written interrogatories; and (4) propound up to ten (10) requests for admission.

(ii) Expert Discovery. Each party may select a witness who is retained or specially employed to provide expert testimony and an additional expert witness to testify with respect to damages issues, if any. The parties shall exchange expert reports and documents under the same requirements as Federal Rules of Civil Procedure 26(a)(2) &(4).

(iii) Additional Discovery. The Arbitrator may, on application by either party, authorize additional discovery only if deemed essential to avoid injustice. In the event that remote witnesses might otherwise be unable to attend the arbitration, arrangements shall be made to allow their live testimony by video conference during the arbitration hearing.

(g) The Arbitrator shall render an award within six (6) months after the date of appointment, unless the parties agree to extend such time. The award shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law. The Arbitrator shall have authority to award compensatory damages only, and shall not award any punitive, exemplary, or multiple damages. The award (subject to clarification or correction by the arbitrator as allowed by statute and/or the Federal Rules) shall be final and binding upon the parties, subject solely to the review procedures provided in this Section.

(h) Judicial review may be had by any party seeking same according to the standard of review that the first-level appellate court in the county of Santa Clara, California would apply to a decision by a trial court. Each party hereby stipulates to the jurisdiction of the Enforcing Court (as defined in this section) for the purpose of conducting such judicial review, which may be had as to any issue of fact or law that would give rise to appellate review in the jurisdiction of the Enforcing Court including, but not limited to, any substantial error of law or manifest disregard for law by the Arbitrator. To the extent that any portion of this provision for judicial review is held to be contrary to governing law, then that portion shall be severed from the remainder of this section, which shall remain valid and enforceable in accordance with its terms.



(i) This Agreement's arbitration provisions are to be performed in San Jose, California. Any judicial proceeding arising out of or relating to this Agreement or the relationship of the parties, including without limitation any proceeding to enforce this Section, to review or confirm the award in arbitration, or for preliminary injunctive relief, shall be brought exclusively in a court of competent jurisdiction in the county of Santa Clara, California (the "Enforcing Court"). By execution and delivery of this Agreement, each party accepts the jurisdiction of the Enforcing Court.

(j) Each party shall pay their own expenses in connection with the resolution of Disputes pursuant to this Section, including attorneys' fees.

(k) Notwithstanding anything contained in this Section to the contrary, in the event of any Dispute, prior to referring such Dispute to arbitration pursuant to Subsection (b) of this Section, the Parties shall attempt in good faith to resolve any and all controversies or claims relating to such Disputes promptly by negotiation commencing within ten (10) calendar days of the written notice of such Disputes by either party. The representatives of the parties shall meet at a mutually acceptable time and place and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute for a period of four (4) weeks. In the event that the parties are unable to resolve such Dispute pursuant to this Subsection (k), the provisions of Subsections (a) through (j) of this Section, inclusive, as well as Subsections (l), (m) and (n) of this Section shall apply.

(l) The parties agree that the existence, conduct and content of any arbitration pursuant to this Section shall be kept confidential and no party shall disclose to any person any information about such arbitration, except as may be required by law or by any governmental authority or for financial reporting purposes in each party's financial statements.

(m) IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

(n) In the event of any lawsuit between the parties arising out of or related to this Agreement, the parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory or other requirements for a trial by jury.

**9.9 Amendments and Waivers.** The Parties may mutually amend any provision of this Agreement at any time prior to the Effective Time with the prior authorization of their respective boards of directors; provided, however, that any amendment effected subsequent to stockholder approval will be subject to the restrictions contained in the Delaware General Corporation Law. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of

warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation, or breach of warranty or covenant.

9.10 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

9.11 **Expenses.** Each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby; provided that Buyer shall be responsible for any filing fees required by any governmental authority to effect the transaction contemplated hereby.

9.12 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires. The word “including” shall mean including without limitation.

9.13 **Incorporation of Exhibits and Schedules.** The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Nothing in any Schedule will be adequate to disclose an exception to a representation or warranty in this Agreement, unless such Schedule identifies the specific representation or warranty to which it applies. Additionally, the mere listing (or inclusion of a copy) of an item is not adequate to disclose an exception or other response to a representation or warranty in this Agreement, except to the extent such representation or warranty only pertains to the existence of such item itself.

\* \* \* \* \*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

FLEXTRONICS INTERNATIONAL USA,  
INC.

By: Donald H Standley

Title: Vice President, Director of Tax

CW MERGER COMPANY

By: Donald H Standley

Title: President

COLDWATT, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

MICHAEL L. SCHULHOF, SOLELY AS  
STOCKHOLDER REPRESENTATIVE

By: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

FLEXTRONICS INTERNATIONAL USA, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

CW MERGER COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

COLDWATT, INC.

By:  \_\_\_\_\_

Title: CEO

MICHAEL L. SCHULHOF, SOLELY AS STOCKHOLDER REPRESENTATIVE

By: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

FLEXTRONICS INTERNATIONAL USA,  
INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

CW MERGER COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

COLDWATT, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

MICHAEL L. SCHULHOF, SOLELY AS  
STOCKHOLDER REPRESENTATIVE

By:  \_\_\_\_\_

Title: \_\_\_\_\_

CERTIFICATE OF MERGER  
OF  
CW MERGER COMPANY  
WITH AND INTO  
COLDWATT, INC.

The undersigned corporations, organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DO HEREBY CERTIFY:

FIRST: The name and state of incorporation of each of the constituent corporations (the "Constituent Corporations") to the merger are as follows:

<u>NAME</u>	<u>STATE OF INCORPORATION</u>
ColdWatt, Inc.	Delaware
CW Merger Company	Delaware

SECOND: An Agreement and Plan of Merger, dated as of April 7, 2008 (the "Merger Agreement"), by and among the Constituent Corporations, Flextronics International USA, Inc. and the Stockholder Representative (as defined in the Merger Agreement), with respect to the merger of CW Merger Company with and into ColdWatt, Inc. (the "Merger"), has been approved, adopted, certified, executed and acknowledged by each of the Constituent Corporations in accordance with the requirements of Section 251 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation in the Merger shall be ColdWatt, Inc. (the "Surviving Corporation").

FOURTH: The Certificate of Incorporation of the Surviving Corporation shall read in its entirety as set forth in Exhibit A hereto.

FIFTH: An executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation, which is 13809 Research Blvd. Suite 475 Austin, Texas, 78750, and will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of either of the Constituent Corporations.

FIFTH: This Certificate of Merger and the Merger provided for herein between the Constituent Corporations shall be effective upon filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, for purposes of effectuating the Merger of the Constituent Corporations, have caused this Certificate of Merger to be duly executed.

Dated: [\_\_\_\_], 2008

**CW MERGER COMPANY**

By: \_\_\_\_\_

Name:

Title:

**COLDWATT, INC.**

By: \_\_\_\_\_

Name:

Title:

## EXCLUSIVITY AGREEMENT

THIS EXCLUSIVITY AGREEMENT (this “Agreement”), is made as of April 7, 2008, by and among the stockholders of ColdWatt, Inc., a Delaware corporation (“ColdWatt”), party hereto (each a “Stockholder”) and Flextronics International USA, Inc., a California corporation (“Flextronics”).

### RECITALS

WHEREAS, Flextronics and ColdWatt have entered into a Merger Agreement, attached hereto as Exhibit A (the “Merger Agreement”), by and among Flextronics, CW Merger Company, a Delaware corporation and wholly owned subsidiary of Flextronics (“Merger Sub”), and ColdWatt;

WHEREAS, on the terms and subject to the conditions of the Merger Agreement, upon the consummation of the Merger (as defined in the Merger Agreement), Merger Sub will be merged with and into ColdWatt, with ColdWatt as the surviving corporation, and the separate existence of Merger Sub will cease;

WHEREAS, as of the date hereof, each Stockholder, owns equity securities of ColdWatt and has a financial interest in the consummation of the Merger;

WHEREAS, Flextronics has devoted, and will continue to devote, substantial time and effort and incur substantial expenses conducting due diligence and preparing the acquisition agreements and other documentation in connection with the Merger; and

WHEREAS, Section 5.13 of the Merger Agreement requires that each Stockholder become a party to this Agreement as a material inducement for Flextronics to consummate the Merger.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

### AGREEMENT

Section 1.1 Defined Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Merger Agreement.

Section 1.2 Exclusivity. Throughout the period that begins on the date hereof and ends upon the earlier of the Effective Time or the termination of the Merger Agreement pursuant to Article 7 thereof (the “Exclusive Period”), Stockholder will not, and Stockholder will cause each of its Affiliates and other representatives or agents to not, directly or indirectly, solicit, initiate, seek or encourage any inquiry, proposal or offer from, furnish any information to or participate in any discussion or negotiation with any Person (other than Buyer or any Person on Buyer’s behalf) regarding any acquisition of the capital stock, assets or business, in whole or in part (by purchase, merger, tender offer, statutory share exchange, joint venture or otherwise) of ColdWatt or any of its Subsidiaries, except sales of inventory in the Ordinary Course of Business. Stockholder will, and Stockholder will cause each of its Affiliates and other



representatives or agents to, immediately terminate all such discussions or negotiations that may be in progress on the date hereof.

Section 1.3 Confidentiality; Notice. Stockholder will not furnish any information with respect to the Merger to any person or any entity, or furnish any non-public information to any Person or entity that has made any proposal with respect to any such transaction. Stockholder will promptly notify Flextronics in writing of any offer to acquire ColdWatt that it receives from any party during the Exclusive Period, the principal terms of the same and the identity of the party making the same.

Section 1.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the undersigned has executed this Exclusivity Agreement, effective as of the date first written above.

**FLEXTRONICS:**

FLEXTRONICS INTERNATIONAL USA, INC.

By: \_\_\_\_\_

**STOCKHOLDERS:**

AUSTIN VENTURES VIII, L.P.

By: AV Partners VIII, L.P.  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MATRIX PARTNERS VII, L.P.

By: Matrix VII Management Co., L.L.C.,  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Managing Member

WESTON & CO. VII LLC, as Nominee

By: Matrix Partners Management Services, L.P.,  
Sole Member

By: Matrix Partners Management Services GP, LLC,  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Managing Member

GTIPS I LLC

By: GTI Ventures LLC,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SIGNATURE PAGE TO EXCLUSIVITY AGREEMENT]

GTI VENTURES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RRE VENTURES III-A L.P.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RRE VENTURES III L.P.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RRE VENTURES FUND III L.P.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SIGNATURE PAGE TO EXCLUSIVITY AGREEMENT]

**Schedule 3.15  
Target's Intellectual Property**

Trademarks:

Word Mark: COLDWATT (Registration date April 17, 2007)

Patents/Patents Pending:

Filing Date	Pat./Pub./App. No.	Title	Issue/Pub. Date	Exp. Date	Inventors	Attorney/Rockwell Reference
2/21/2002	6,775,159	Switching Power Converter Circuits Providing Main and Auxiliary Output Voltages	8/10/2004	2/21/2022	Webb & Sun	CDW02-007/02RSC007
2/21/2002	6,549,436	Integrated Magnetic Converter Circuit and Method with Improved Filtering	4/15/2003	2/21/2022	Sun	CDW02-006/02RSC006
4/18/2002	6,873,237	Core Structure	3/29/2005	4/18/2012	Chandrasekaran, Mehrotra & Sun	CDW-060/01SC060
11/21/2002	7,046,523	Core Structure and Interleaved DC-DC Converter Topology	5/16/2006	4/18/2012	Sun, Jing, Chandrasekaran & Mehrotra	CDW-01-090/01SC090
4/30/2004	2005/0245658	Synthesis of Magnetic, Dielectric or Phosphorescent Nano Composites	11/3/2005		Mehrotra & Goldberg	CDW-01-086/01SC086 & 01SC094
8/19/2004	7,012,414	Vertically Packaged Switched-Mode Power Converter	3/14/2006	8/19/2024	Mehrotra, Sun & Chandrasekaran	CDW00-066/00CR066
8/19/2004	2006/0038649	Winding Structure for Efficient Switch-Mode Power Converters	2/23/2006		Mehrotra & Sun	CDW01-018/01SC018
8/19/2004	7,321,283	Vertical Winding Structures for Planar Magnetic Switched-Mode Power Converters	1/22/2008	8/19/2024	Mehrotra, Sun & Chandrasekaran	CDW02-060/02CR060
8/19/2004	7,280,026	Extended E Matrix Integrated Magnetics (MIM) Core	10/9/2007	4/18/2022	Chandrasekaran & Mehrotra	CDW04-066/04RSC066
8/19/2004	6,980,077	Composite Magnetic Core for Switch-Mode Power	12/27/2005	8/19/2024	Chandrasekaran, Mehrotra & Sun	CDW04-018/04RSC018 & 04RSC079

3/29/2005	2006/022647 7	Substrate Driven Field-Effect Transistor	10/12/2006			Brar & Asbeck	CDW-004
3/29/2005	2006/022647 8	Semiconductor Device Having a Lateral Channel and Contacts on Opposing Surfaces Thereof	10/12/2006			Brar & Ha	CDW- 005/05RSC019
5/13/2005	7,339,208	Semiconductor Device Having Multiple Lateral Channels and Method of Forming the Same	3/4/2008	5/13/2025		Brar & Ha	CDW- 006/05RSC021
8/25/2005	7,285,807	Semiconductor Device having Substrate-Driven Field-Effect Transistor and Schottky Diode and Method of Forming the Same	10/23/2007	8/25/2025		Brar & Ha	CDW- 007/04RSC101
9/27/2005	2007/006928 6	Semiconductor Device Having an Interconnect with Sloped Walls and Methods of Forming the Same	3/29/2007			Brar, Ha & Vorhaus	CDW- 008/005RSC020
2/8/2006	2006/018768 4	Power Converter Employing Integrated Magnetics with a Current Multiplier Rectifier and Method of Operating the Same	8/24/2006			Chandrasekaran & Mehrotra	CDW-001
2/23/2006	7,176,662	Power Converter Employing a Tapped Inductor and Integrated Magnetics and Method of Operating the Same	2/13/2007	2/23/2026		Chandrasekaran	CDW-002
2/23/2006	2006/019817 3	Control Circuit for Depletion Mode Switch and Method of Operating the Same	9/7/2006			Rozman	CDW-003
3/28/2006	TW 95110705	Semiconductor Device Having a Lateral Channel and Contacts on Opposing Surfaces Thereof					CDW-005TW
11/22/2006	11/562,466	Bus Converter Circuit and Associated Methods				Young & Kates	CW.P0001

1/19/2007	7,298,118	Power Converter Employing a Tapped Inductor and Integrated Magnetics and Method of Operating the Same	11/20/2007	2/23/2026	Chandrasekaran	CDW-002C1
2/27/2007	2007/014541 7	High Voltage Semiconductor Device Having a Lateral Channel and Enhanced Gate-To-Drain Separation	6/28/2007		Brar, Ha, Sadaka, & Nguyen	CDW-005CP1
3/7/2007	60/905,527	Power Converter Employing a Tapped Inductor and Integrated Magnetics and Method of Operating the Same			Chandrasekaran, Kao & Zhang	CDW-002C1CP1P
3/14/2007	11/686,140	Isolated Power Converter			Chandrasekaran	21595-003001
3/19/2007	60/918,806	Power System States			Artusi, Fosler & Rozman	CDW-011CP1CP1P1
4/3/2007	2007/018771 7	Semiconductor Device Having Reduced On-Resistance and Method of Forming the Same	8/16/2007		Sadaka, Brar, Ha & Nguyen	CDW-006P1
6/19/2007	2007/029855 9	Vertical Field-Effect Transistor and Method of Forming the Same	12/27/2007		Brar & Ha	CDW-009A
6/19/2007	2007/029856 4	Vertical Field-Effect Transistor and Method of Forming the Same	12/27/2007		Brar & Ha	CDW-009B
6/19/2007	2007/029602 8	Vertical Field-Effect Transistor and Method of Forming the Same	12/27/2007		Brar & Ha	CDW-009C
6/19/2007	60/945,024	System and Method for Estimating Input Power by Filtering an Instantaneous Voltage-Current Product			Jayaraman & Gugle	CDW-012P
6/27/2007	11/769,437	Magnetic Materials Made from Magnetic Nanoparticles and Associated Methods				
8/30/2007	2008/005487 4	Power Converter Employing Regulators with a Coupled Inductor	3/6/2008		Chandrasekaran & Mayer	CDW-010

9/13/2007	11/854,959	Synthesis of Magnetic, Dielectric or Phosphorescent Nano Composites			Mehrotra & Goldberg	CDW01-086CP1
10/2/2007	2008/0024259	Extended E Matrix Integrated Magnetics (MIM) Core	1/31/2008		Chandrasekaran & Mehrotra	CDW04-066D1
10/2/2007	2008/0048173	Semiconductor Device Including a Lateral Field-Effect Transistor and Schottky Diode	2/28/2008		Sadaka, Brar, Ha & Nguyen	CDW-007CP1
10/2/2007	2008/0054304	Semiconductor Device Including a Lateral Field-Effect Transistor and Schottky Diode	3/6/2008		Sadaka, Brar, Ha & Nguyen	CDW-007CP2
10/2/2007	2008/0048174	Semiconductor Device Including a Lateral Field-Effect Transistor and Schottky Diode	2/28/2008		Sadaka, Brar, Ha & Nguyen	CDW-007CP3
10/22/2007	2008/0048219	Semiconductor Device Having Substrate-Driven Field-Effect Transistor and Schottky Diode and Method of Forming the Same	2/28/2008		Brar & Ha	CDW-007C1
11/19/2007	11/942,632	Power Converter Employing a Tapped Inductor and Integrated Magnetics and Method of Operating the Same			Chandrasekaran, Kao & Zhang	CDW-002C1CP1
12/13/2007	11/955,627	System and Method for Estimating Input Power for a Power Processing Circuit			Jayaraman & Gugle	CDW-012A
12/13/2007	11/955,642	System and Method for Estimating Input Power for a Power Processing Circuit			Jayaraman & Gugle	CDW-012B
2/21/2008	12/034,746	Semiconductor Device Having Multiple Lateral Channels and Method of Forming the Same			Brar & Ha	CDW-006C1
3/19/2008	12/051,334	Power System with Power Converters Having an Adaptive Controller			Artusi, Fosler & Rozman	CDW-011CP1CP1

		Magnetic Materials Made from Magnetic Nanowires and Associated Methods				
not yet filed		Magnetic Materials, and Methods of Formation (formerly referred to as Two Level Exchange Coupling with Minimal Eddy Current Losses)			Sadaka, Young, Mehrotra & Ganguli	