UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

# FORM 8-K

## CURRENT REPORT

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

Date of report (Date of earliest event reported) March 19, 2009 (March 13, 2009)

NetFabric Holdings, Inc.

(Exact Name of Registrant as Specified in Charter)

| Delaware | 0-21419 | 76-0307819 |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

| 299 Cherry Hill Road, Parsippany, NJ | 07054 |
|---|---|
| (Address of Principal Executive Offices) | (Zip Code) |

Registrant's telephone number, including area code (973) 537-0077

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01. Entry into a Material Definitive Agreement.**

See Item 2.03.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On March 13, 2009, NetFabric Holdings, Inc. (the "Company"), along with its wholly-owned subsidiary, NetFabric Technologies, Inc., d/b/a UCA Services, Inc. ("UCA") entered into a Convertible Note Purchase Agreement dated March 12, 2009 with Fortify Infrastructure Services, Inc. ("Fortify). Pursuant to the Convertible Note Purchase Agreement, Fortify purchased a Secured Convertible Promissory Note (the "Note") from UCA in the principal amount of $5 million with the Company being a guarantor for UCA's borrowings.

The Note has a six-month term, and bears interest at 8% per annum, compounded annually. The Note is secured by (i) all of the assets of UCA and the Company and (ii) all of the equity securities of UCA currently owned or hereafter acquired by the Company. At the exclusive option of Fortify, Fortify may convert the entire principal amount of and accrued and unpaid interest on the Note into shares of Series A Preferred Stock of UCA. The conversion price shall be at a price equal to the price per share reflecting a valuation of UCA equal to $5 million, on an as-converted basis.

Fortify, UCA and the Company also entered into a Credit Agreement whereby Fortify agreed to provide UCA a revolving line of credit of up to $1 million for working capital purposes. Amounts borrowed under the line of credit are secured by (i) all of the assets of UCA and the Company and (ii) all of the equity securities of UCA currently owned or hereafter acquired by the Company.

Fortify, UCA and the Company also entered into an Option and Purchase Agreement ("Option Agreement'). Pursuant to the Option Agreement, Fortify has an option to acquire all of the outstanding shares of common stock of UCA. Upon effectiveness of the Company's Definitive Schedule 14 C Information Statement to be filed with the Securities and Exchange Commission (the "SEC") in connection with certain actions taken by the written consent of holders of a majority of the Company's outstanding common stock approving the terms of the Option Agreement, Fortify will exercise the option. Upon exercise of the Option, the Company will be released from the guaranty obligations of the Note. Fortify will pay the Company $500,000 one year from the date the option is exercised. In addition, Fortify will pay additional amounts to the Company and certain employees of UCA based on UCA's performance during the periods specified in the Option Agreement.

The Company plans to file a Schedule 14C Information Statement with the SEC shortly after completion of its audit for the years ended December 31, 2007 and 2008.

The Company used approximately $3 million from the proceeds of the Note to repay all amounts owed to Laurus Master Fund. The balance of the proceeds will be used for repayment of debt, other payables and for working capital purposes.

**Item 3.02. Unregistered Sales of Equity Securities.**

See Item 2.03.

**Item 9.01. Financial Statements and Exhibits.**

*(d) Exhibits.*

| Exhibit No. | Description |
|---|---|
| Exhibit 99.1 | Convertible Note Purchase Agreement, dated March 12, 2009, by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |
| Exhibit 99.2 | Secured Convertible Promissory Note, dated March 12, 2009, by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |
| Exhibit 99.3 | Credit Agreement, dated March 12, 2009, by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |
| Exhibit 99.4 | Security Agreement, dated March 12, 2009, by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |

| | |
|---|---|
| Exhibit 99.5 | Stock Pledge Agreement, dated March 12, 2009, by between Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |
| Exhibit 99.6 | Option and Purchase Agreement, dated March 12, 2009, by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., Netfabric Holdings Inc. and Fortify Infrastructure Services, Inc. |

**SIGNATURES**

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

NETFABRIC HOLDINGS, INC.

Date: March 19, 2009

By: /s/ Fahad Syed
Name: Fahad Syed
Title: Chairman and CEO

**EXHIBIT INDEX**

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**NETFABRIC TECHNOLOGIES, INC., D/B/A UCA SERVICES, INC.**

**CONVERTIBLE NOTE PURCHASE AGREEMENT**

**March 12, 2009**

**NETFABRIC TECHNOLOGIES, INC., D/B/A UCA SERVICES, INC.**

**CONVERTIBLE NOTE PURCHASE AGREEMENT**

This Convertible Note Purchase Agreement (the "Agreement") is made as of the 12th day of March, 2009 (the "Effective Date"), by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., a New Jersey corporation (the "Company"), Netfabric Holdings Inc., a Delaware corporation (the "Guarantor") and Fortify Infrastructure Services, Inc., a Delaware corporation (the "Purchaser").

**RECITALS**

The Company desires to issue and sell and the Purchasers desire to purchase the convertible promissory note attached to this Agreement as Exhibit A (the "Note") which shall be cancelable and convertible on the terms stated therein. The Note and the equity securities issuable upon conversion thereof (and the securities issuable upon conversion of such equity securities) are collectively referred to herein as the "Securities."

**AGREEMENT**

In consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

1. **Purchase and Sale of Note.**

(a) **Sale and Issuance of Note.** At Closing (as defined below), the Purchaser agrees to provide a bridge loan to the Company, pursuant to the terms and conditions of this Agreement and the Note, in the amount of $5,000,000.00 (the "Purchase Price") to allow the Company to use for working capital purposes as well as repay in full the outstanding liabilities of the Company set forth on Schedule 1 attached hereto. Accordingly, subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase at the Closing, and the Company agrees to sell and issue to the Purchaser, a Note in the principal amount equal to the Purchase Price as specified on Exhibit A to this Agreement.

(b) **Closing; Delivery.** The purchase and sale of the Note shall take place at the offices of Royse Law Firm, PC, 2600 El Camino Real, Suite 110, Palo Alto, California 94306, at 10 a.m., on March 12, 2009, or at such other time and place as the Company and the Purchaser mutually agree upon, orally or in writing (which time and place are designated as the "Closing"). At the Closing:

(i) The Purchaser shall deliver the Purchase Price, payable by wire transfer to the bank account(s) of: (i) each of the creditor(s) in such amounts set forth opposite their name(s) on Schedule 1 attached hereto (the "Creditors"), and (ii) the Company's bank account in the amount set forth on Schedule 1; and

(ii) The Company shall deliver to the Purchaser the Note and a duly executed settlement and release agreement, payoff letter or other instrument satisfactory in form and substance to the Purchaser in its sole discretion evidencing the release by the Creditors of any and all liens and encumbrances on the Company's and the Guarantor's assets (including the Shares).

(iii) The Company shall deliver to the Purchase an amended certificate of incorporation (the "Amended Certificate"), in substantially the form attached hereto as Schedule 2, authorizing the creation of _____ shares of preferred stock. The Amended Certificate shall have been ratified by the Company's board of directors and approved by the Company's shareholders, and filed with the Secretary of State of New Jersey.

2. **Stock Purchase Agreement.** The Purchaser understands and agrees that the conversion of the Note into equity securities of the Company may require the Purchaser's execution of certain agreements (in form reasonably agreeable to the Purchaser) relating to the purchase and sale of such securities as well as registration, co-sale and voting rights, if any, relating to such equity securities.

3. **Credit Agreement.** The Purchaser agrees to extend a credit facility to the Company in an amount not to exceed $1,000,000.00, from which the Company may draw down for working capital purposes, on the terms and conditions set forth in the credit agreement attached to this agreement as Exhibit B (the "Credit Agreement"). Amounts drawn on the credit facility shall be secured as provided in Section 4 hereof.

4. **Security Interest and Stock Pledge.** The indebtedness represented by the Note and the Credit Agreement and all of the Company's obligations arising under the Note and Credit Agreement shall be secured by (i) all of the assets of the Company and the Guarantor in accordance with the provisions of the security agreement in substantially the form attached to this Agreement as Exhibit C (the "Security Agreement"), and (ii) a pledge by the Guarantor of all of the equity securities of the Company currently owned or hereafter acquired by the Guarantor (the "Shares") in accordance with the provisions of a stock pledge agreement in substantially the form attached to this Agreement as Exhibit D (the "Pledge Agreement").

5. **Option Agreement.** In connection with the execution of this Agreement, the Note, the Credit Agreement, the Security Agreement and the Pledge Agreement, the Guarantor and the Purchaser shall enter into an option agreement (the "Option Agreement"), in substantially the form attached to this Agreement as Exhibit E, pursuant to which Guarantor shall grant to the Purchaser the option to purchase the Shares in accordance with the terms and conditions set forth in the Option Agreement (the "Acquisition").

6. **Majority Stockholder Proxy**. This Agreement and the agreements attached as exhibits hereto are collectively referred to herein as the "Transaction Agreements." In connection with the transactions contemplated by the Option Agreement, Guarantor shall obtain and deliver to the Purchaser at or prior to the Closing a stockholder agreement and irrevocable proxy (the "Proxy"), in substantially the form attached to this Agreement as Exhibit F, from the Guarantor's stockholders holding at least 51% of the outstanding stock (the "Majority Stockholders") of the Purchaser, evidencing the consent by the Majority Stockholders to the Acquisition and the related transactions contemplated by the Transaction Agreements as described in an information statement to be delivered by Guarantor to its stockholders.

7. **Post-Closing Covenants of Company and Guarantor**.

(a) As long as any portion of the Note is outstanding, and except as contemplated in the Transaction Agreements, the Company shall not, without the prior written consent of the Purchaser incur any indebtedness or obligation in excess of Twenty Five Thousand Dollars ($25,000.00) or act as a guarantor or surety for any indebtedness or obligation for any party (including Guarantor).

(b) As long as any portion of the Note is outstanding, the Company shall provide the Purchaser with (i) monthly unaudited financial statements (balance sheet, statement of operations and statement of cash flows), and (ii) upon Purchaser's request, the right to review and inspect the Company's books and records provided however that Purchaser shall give the Company forty-eight (48) hours notice of such request.

(c) As long as any portion of the Note is outstanding, the Company shall not remit any dividends or make any distribution of cash or property to the Guarantor with respect to the stock of the Company or otherwise make any advance to Guarantor.

**8. Representations and Warranties of the Company.** In this Agreement, any reference to any event, change, condition or effect being "material" with respect to any entity or group of entities means any material event, change, condition or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of such entity or group of entities. In this Agreement, any reference to a "Material Adverse Effect" with respect to any entity or group of entities means any event, change or effect that, when taken individually or together with all other adverse changes and effects, is or is reasonably likely to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, operations, results of or prospects of such entity and its subsidiaries, taken as a whole, or to prevent or materially delay consummation of the transactions contemplated under this Agreement or otherwise to prevent such entity and its subsidiaries from performing their obligations under this Agreement.

In this Agreement, any reference to "knowledge" means an individual will be deemed to have knowledge of a particular fact or other matter if: (i) that individual is actually aware of that fact or matter; or (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonable comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. A party (that is not an individual) will be deemed to have knowledge of a particular fact or other matter if any individual who is serving as a director, officer, executive or manager, partner, executor or trustee of that party (or in any similar capacity) has, or at any time had, knowledge of that fact or other matter (as set forth in (i) and (ii) of this definition), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that party or individual.

Except as disclosed in a document of the same date as this Agreement and delivered by the Company to Purchaser prior to the execution and delivery of this Agreement and referring to the representations and warranties in this Agreement (the "Company Disclosure Schedule"), the Company represents and warrants to Purchaser, as of the Closing**:**

(a) **Organization Standing and Power; Subsidiaries**. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey. The Company has the requisite corporate power and authority and all necessary government approvals to own, lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted, except where the failure to have such power, authority and governmental approvals would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that would not, individually or in the aggregate, have a Material Adverse Effect on the Company. Except as set forth on Schedule 8(a), the Company currently has no subsidiaries and has had no subsidiaries since its inception. Other than the transactions contemplated by the Transaction Agreements, there are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock of the Company, or otherwise obligating the Company to issue, transfer, sell, purchase, redeem or otherwise acquire any such securities. Except as set forth in the Company Disclosure Schedule, the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity.

(b) **Certificate of Incorporation and Bylaws**. The Company has delivered a true and correct copy of its Certificate of Incorporation and Bylaws or other charter documents, each as amended to date, to Purchaser. The Company is not in violation of any of the provisions of its Certificate of Incorporation or Bylaws or equivalent organizational documents.

(c) **Capital Structure**. The authorized capital stock of the Company consists of 5,000,000 shares of Common Stock, of which there are issued and outstanding as of the close of business on the date hereof, 3,000,000 shares of Common Stock. There are no other outstanding shares of capital stock or voting securities and no outstanding commitments to issue any shares of capital stock or voting securities of the Company. All outstanding shares of the Company's capital stock are duly authorized, validly issued, fully paid and non-assessable and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof, and are not subject to preemptive rights or rights of first refusal created by statute, the Certificate of Incorporation or Bylaws of the Company or any agreement to which the Company is a party or by which it is bound. All outstanding shares of the Company's Common Stock were issued in compliance with all applicable federal and state securities laws. As of the close of business on the Effective Date, the Company has not reserved, issued or granted any shares of Common Stock for issuance to employees and consultants pursuant to a Company Stock Plan (the "Plan"). Except (i) for the rights created pursuant to this Agreement, (ii) for the Company's right to repurchase any unvested shares under the Plan and (iii) as set forth in this Section 8(c), there are no options, warrants, calls, rights, commitments, agreements or arrangements of any character to which the Company is a party or by which the Company is bound relating to the issued or unissued capital stock of the Company or obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no contracts, commitments or agreements relating to voting, purchase or sale of the Company's capital stock (i) between or among the Company and any of its stockholders and (ii) between or among any of the Company's stockholders. True and complete copies of all agreements and instruments relating to or issued under the Plan have been made available to Purchaser and such agreements and instruments have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments in any case from the form made available to Purchaser.

(d) **Authority**. The Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company. The Company's Board of Directors has approved this Agreement and issuance of the Securities hereunder. This Agreement has been duly executed and delivered by the Company and assuming due authorization, execution and delivery by Purchaser, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) **No Conflicts; Required Filings and Consents**.

(i) The execution and delivery of this Agreement by the Company does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (i) any provision of the Certificate of Incorporation or Bylaws of the Company or any of its subsidiaries, as amended, or (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its properties or assets.

(ii) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws; and (ii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not have a Material Adverse Effect on the Company and would not prevent, or materially alter or delay any of the transactions contemplated by this Agreement.

(f) **Financial Statements.** Section 8(f) of the Company Disclosure Schedule includes a true, correct and complete copy of the Company's audited financial statements for the fiscal year ended December 31, 2006, a draft copy of the Company's audited financial statements for the fiscal year ended December 31, 2007, a draft of its unaudited financial statements (balance sheet, statement of operations and statement of cash flows) on a consolidated basis as of September 30, 2008, and a draft of the Company's unaudited financial statements (balance sheet, statement of operations and statement of cash flows) as of December 31, 2008 (collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") (except that the unaudited financial statements do not have notes thereto) applied on a consistent basis throughout the periods indicated and with each other. The Financial Statements accurately set out and describe the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

(g) **Absence of Undisclosed Liabilities**. Except as set forth in Schedule 8(g), the Company has no material obligations or liabilities of any nature (matured or unmatured, fixed or contingent) other than (i) those set forth or adequately provided for in the Balance Sheet for the period ended December 31, 2008 (the "Company Balance Sheet"), (ii) those incurred in the ordinary course of business and not required to be set forth in the Company Balance Sheet under GAAP, (iii) those incurred in the ordinary course of business since the Company Balance Sheet Date and consistent with past practice, and (iv) those incurred for professional fees in connection with the execution of this Agreement.

(h) **Absence of Certain Changes**. Except as set forth in Section 8(h) of the Company Disclosure Schedule, since December 31, 2008 ( the "Company Balance Sheet Date") there has not been, occurred or arisen any:

(i) transaction by the Company, other than transactions in connection with elimination of intercompany accounts, except in the ordinary course of business as conducted on that date and consistent with past practices;

(ii) amendments or changes to the Certificate of Incorporation or Bylaws of the Company (except as contemplated by the Transaction Agreements);

(iii) capital expenditure or commitment by the Company in any individual amount exceeding $10,000.00 or in the aggregate, exceeding $50,000.00;

(iv) destruction of, damage to, or loss of any assets (including, without limitation, intangible assets), business or customer of the Company (whether or not covered by insurance) which would constitute a Material Adverse Effect;

(v) labor trouble or claim of wrongful discharge or other unlawful labor practice or action;

(vi) change in accounting methods or practices (including any change in depreciation or amortization policies or rates, any change in policies in making or reversing accruals) by the Company;

(vii) revaluation by the Company of any of its assets;

(viii) declaration, setting aside, or payment of a dividend or other distribution in respect to the capital stock of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any of its capital stock, except repurchases of the Company Common Stock from terminated Company employees or consultants at the original per share purchase price of such shares;

(ix) increase in the salary or other compensation payable or to become payable by the Company to any officers, directors, employees or consultants of the Company, except in the ordinary course of business consistent with past practice, or the declaration, payment, or commitment or obligation of any kind for the payment by the Company of a bonus or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement, or other than as set forth in Section 8(p) below, the establishment of any bonus, insurance, deferred compensation, pension, retirement, profit sharing, stock option (including without limitation, the granting of stock options, stock appreciation rights, performance awards), stock purchase or other employee benefit plan;

(x) sale, lease, license or other disposition of any of the assets or properties of the Company, except in the ordinary course of business and not in excess of $10,000.00, in the aggregate;

(xi) termination or material amendment of any material contract, agreement or license (including any distribution agreement) to which the Company is a party or by which it is bound;

(xii) loan by the Company to any person or entity, or guaranty by the Company of any loan, except for (i) travel or similar advances made to employees in connection with their employment duties in the ordinary course of business, consistent with past practice and (ii) trade payables not in excess of $50,000.00 in the aggregate and in the ordinary course of business, consistent with past practice;

(xiii) waiver or release of any right or claim of the Company, except for inter company balances and doubtful allowances, including any write-off or other compromise of any account receivable of the Company in excess of $50,000.00 in the aggregate;

(xiv) commencement or notice or threat of commencement of any lawsuit or proceeding against or, to the Company's or the Company's officers' or directors' knowledge, investigation of the Company or its affairs;

(xv) to the Company's knowledge, notice of any claim of ownership by a third party of the Company's Intellectual Property (as defined in Section 8(m) below) or, to Company's knowledge, of infringement by the Company of any third party's Intellectual Property rights;

(xvi) issuance or sale by the Company of any of its shares of capital stock, or securities exchangeable, convertible or exercisable therefor, or of any other of its securities, other than as contemplated by the Transaction Agreements;

(xvii) material changes in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(xviii) to the Company's knowledge, any event or condition of any character that has or could reasonably be expected to have a Material Adverse Effect on the Company; or

(xix) agreement by the Company, or any of its officers or employees on its behalf to do any of the things described in the preceding clauses (i) through (xviii) (other than negotiations with Purchaser and its representatives regarding the transactions contemplated by this Agreement).

(i) **Litigation**. Except as set forth on Schedule 8(i), there is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or, to the Company's knowledge, threatened against the Company or any of its properties or any of its officers or directors (in their capacities as such) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Company. There is no judgment, decree or order against the Company or, to the Company's knowledge, any of its directors or officers (in their capacities as such), that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement, or that could reasonably be expected to have a Material Adverse Effect on the Company. All litigation to which the Company is a party (or, to the knowledge of the Company, threatened to become a party) is disclosed in the Company Disclosure Schedule.

(j) **Restrictions on Business Activities**. There is no agreement, judgment, injunction, order or decree binding upon the Company which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current or future business practice of the Company, any acquisition of property by the Company or the overall conduct of business by the Company as currently conducted or as proposed to be conducted by the Company. The Company has not entered into any agreement under which it is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

(k) **Permits; Company Products; Regulation**.

(i) The Company is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders necessary for the Company to own, lease and operate its properties or to carry on its business as it is now being conducted (the "Company Authorizations") and no suspension or cancellation of any Company Authorization is pending or, to the Company's knowledge, threatened, except where the failure to have, or the suspension or cancellation of, any Company Authorization would not have a Material Adverse Effect on the Company. The Company is not in conflict with, or in default or violation of, (i) any laws applicable to the Company or by which any property or asset of the Company is bound or affected, (ii) any Company Authorization or (iii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company is a party or by which the Company or any property or asset of the Company is bound or affected, except for any such conflict, default or violation that would not, individually or in the aggregate have a Material Adverse Effect on the Company.

(ii) Except as would not have a Material Adverse Effect on the Company, since January 31, 2009, there have been no written notices, citations or decisions by any governmental or regulatory body that any product produced, manufactured, marketed or distributed at any time by the Company or by any agent on behalf of the Company (the "Products") is defective or fails to meet any applicable standards promulgated by any such governmental or regulatory body. To the knowledge of the Company, the Company has complied in all material respects with the laws, regulations, policies, procedures and specifications with respect to the design, manufacture, labeling, testing and inspection of the Products. Except as disclosed in Section 8(k)(ii) of the Company Disclosure Schedule, since January 31, 2009, there have been no recalls, field notifications or seizures ordered or, to the Company's knowledge, threatened by any such governmental or regulatory body with respect to any of the Products.

(iii) The Company has obtained, in all countries where either the Company or any agent of the Company is marketing or has marketed the Company's Products, all applicable licenses, registrations, approvals, clearances and authorizations required by local, state or federal agencies in such countries regulating the safety, effectiveness and market clearance of the Products currently or previously marketed by the Company or its agents in such countries, except for any such failures as would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company has identified and made available for examination by Purchaser all information relating to regulation of its Products, including licenses, registrations, approvals, permits, device listing, inspections, the Company's recalls and product actions, audits and the Company's ongoing field tests. The Company has identified in writing to Purchaser all international locations where regulatory information and documents are kept.

(l) **Title to Property**.

(i) The Company has good and marketable title to all of its properties, interests in properties and assets, real and personal, reflected in the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties, interests in properties and assets sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business), or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (i) the lien of current taxes not yet due and payable, (ii) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) liens securing debt which is reflected on the Company Balance Sheet. The plants, property and equipment of the Company that are used in the operations of its business are in good operating condition and repair. All properties used in the operations of the Company are reflected in the Company Balance Sheet to the extent GAAP requires the same to be reflected. Section 8(l)(i) of the Company Disclosure Schedule sets forth a true, correct and complete list of all real property owned or leased by the Company, the name of the lessor, the date of the lease and each amendment thereto and the aggregate annual rental and other fees payable under such lease. Such leases are in good standing, are valid and effective in accordance with their respective terms, and there is not under any such leases any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default).

(ii) Section 8(l)(ii) of the Company Disclosure Schedule also sets forth a true, correct and complete list of all equipment (the "Equipment") owned or leased by the Company, and such Equipment is, taken as a whole, (i) adequate for the conduct of the Company's business, consistent with its past practice and (ii) in good operating condition (except for ordinary wear and tear).

(m) **Intellectual Property**.

(i) The Company owns, or is licensed or otherwise possesses legally enforceable rights to use all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, copyrights, and any applications for any of the foregoing, net lists, schematics, industrial models, inventions, technology, know-how, trade secrets, inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material ("Intellectual Property") that are used or proposed to be used in the business of the Company as currently conducted or as proposed to be conducted by the Company, except to the extent that the failure to have such rights has not had and could not reasonably be expected to have a Material Adverse Effect on the Company.

(ii) Section 8(m) of the Company Disclosure Schedule lists (i) all patents and patent applications and all registered and unregistered trademarks, trade names and service marks, registered and unregistered copyrights, and mask work rights, included in the Intellectual Property, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in which any application for such issuance and registration has been filed, (ii) all licenses, sublicenses and other agreements to which the Company is a party and pursuant to which any person is authorized to use any Intellectual Property, and (iii) all licenses, sublicenses and other agreements as to which the Company is a party and pursuant to which the Company is authorized to use any third party patents, trademarks or copyrights, including software ("Third Party Intellectual Property Rights") which are incorporated in, are, or form a part of any products of the Company that are, individually or in the aggregate, material to the business of the Company. The Company is not in violation of any license, sublicense or agreement described in Section 8(m) of the Company Disclosure Schedule. The execution and delivery of this Agreement by the Company and the consummation of the transactions contemplated hereby, will neither cause the Company to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth in Section 8(m) of the Company Disclosure Schedule, the Company is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any liens), the Intellectual Property, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which Intellectual Property is being used.

(iii) To the Company's knowledge, there is no material unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property rights of the Company, any trade secret material to the Company or any Intellectual Property right of any third party to the extent licensed by or through the Company, by any third party, including any employee or former employee of the Company. The Company has not entered into any agreement to indemnify any other person against any charge of infringement of any Intellectual Property, other than indemnification provisions contained in purchase orders arising in the ordinary course of business.

(iv) The Company is not or will not be as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any license, sublicense or other agreement relating to the Intellectual Property or Third Party Intellectual Property Rights, the breach of which would have a Material Adverse Effect on the Company.

(v) To the Company's knowledge, all patents, registered trademarks, service marks and copyrights held by the Company are valid and existing and there is no assertion or claim (or basis therefor) challenging the validity of any Intellectual Property of the Company. The Company has not been sued in any suit, action or proceeding which involves a claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary right of any third party. Neither the conduct of the business of the Company as currently conducted or contemplated nor the manufacture, sale, licensing or use of any of the products of the Company as now manufactured, sold or licensed or used, nor the use in any way of the Intellectual Property in the manufacture, use, sale or licensing by the Company of any products currently proposed, infringes on or will infringe or conflict with, in any way, any license, trademark, trademark right, trade name, trade name right, patent, patent right, industrial model, invention, service mark or copyright of any third party that, individually or in the aggregate, is reasonably likely to have a Material Adverse Effect on the Company. All registered trademarks, service marks and copyrights held by the Company are valid and subsisting. To the Company's knowledge, no third party is challenging the ownership by the Company, or validity or effectiveness of, any of the Intellectual Property. The Company has not brought any action, suit or proceeding for infringement of Intellectual Property or breach of any license or agreement involving Intellectual Property against any third party. There are no pending, or to the best of the Company's knowledge, threatened interference, re-examinations, oppositions or nullities involving any patents, patent rights or applications therefor of the Company, except such as may have been commenced by the Company. There is no breach or violation of or threatened or actual loss of rights under any licenses to which the Company is a party.

(vi) The Company has secured valid written assignments from all consultants and employees who contributed to the creation or development of Intellectual Property of the rights to such contributions that the Company does not already own by operation of law.

(vii) The Company has taken all necessary and appropriate steps to protect and preserve the confidentiality of all Intellectual Property not otherwise protected by patents, patent applications or copyright ("Confidential Information"). The Company has a policy requiring each of its employees and contractors to execute proprietary information and confidentiality agreements substantially in the Company's standard forms and all current and former employees and contractors of the Company have executed such an agreement. All use, disclosure or appropriation of Confidential Information owned by the Company by or to a third party has been pursuant to the terms of a written agreement between the Company and such third party. All use, disclosure or appropriation of Confidential Information not owned by the Company has been pursuant to the terms of a written agreement between the Company and the owner of such Confidential Information, or is otherwise lawful.

(n) **Environmental Matters**.

(i) The following terms shall be defined as follows:

(A) **"Environmental and Safety Laws"** shall mean any federal, state or local laws, ordinances, codes, regulations, rules, policies and orders, as each may be amended from time to time, that are intended to assure the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants; which regulate the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Materials (as defined below) or materials containing Hazardous Materials; or which are intended to assure the protection, safety and good health of employees, workers or other persons, including the public.

(B) **"Hazardous Materials"** shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive substance or material, including without limitation, those substances, materials and wastes defined in or regulated under any Environmental and Safety Laws; petroleum or petroleum products including crude oil or any fractions thereof; natural gas, synthetic gas, or any mixtures thereof; radon; asbestos; or any other pollutant or contaminant

(C) **"Property"** shall mean all real property leased or owned by the Company either currently or in the past.

(D) **"Facilities"** shall mean all buildings and improvements on the Property of the Company.

(ii) The Company represents and warrants as follows: (i) no methylene chloride or asbestos is contained in or has been used at or released from the Facilities; (ii) all Hazardous Materials and wastes have been disposed of in accordance with all Environmental and Safety Laws; and (iii) the Company has received no notice (verbal or written) of any noncompliance of the Facilities or of its past or present operations with Environmental and Safety Laws; (iv) no notices, administrative actions or suits are pending or threatened relating to Hazardous Materials or a violation of any Environmental and Safety Laws; (v) the Company is not a potentially responsible party under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or state analog statute, arising out of events occurring prior to the Closing; (vi) there has not been in the past, and there is not now, any contamination, disposal, spilling, dumping, incineration, discharge, storage, treatment or handling of Hazardous Materials on, under or migrating to or from the Facilities or Property (including without limitation, soils and surface and ground waters); (vii) there have not been in the past, and are not now, any underground tanks or underground improvements at, on or under the Property including without limitation, treatment or storage tanks, sumps, or water, gas or oil wells; (viii) there are no polychlorinated biphenyls ("PCBs") deposited, stored, disposed of or located on the Property or Facilities or any equipment on the Property containing PCBs at levels in excess of 50 parts per million; (ix) there is no formaldehyde on the Property or in the Facilities, nor any insulating material containing urea formaldehyde in the Facilities; (x) the Facilities and the Company's uses and activities therein have at all times complied with all Environmental and Safety Laws; (xi) the Company has all the permits and licenses required to be issued and is in full compliance with the terms and conditions of those permits; and (xii) the Company is not liable for any off-site contamination under any Environmental and Safety Laws.

(o) **Taxes**.

(i) For purposes of this Section 8(o) and other provisions of this Agreement relating to Taxes, the following definitions shall apply:

(A) The term "Taxes" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, (A) imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including but not limited to, federal, state and foreign income taxes), payroll and employee withholding taxes, unemployment insurance contributions, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, withholding taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, and other Tax of any kind whatsoever, which are required to be paid, withheld or collected, in an aggregate amount in excess of $10,000, (B) any liability for the payment of amounts referred to in (A) as a result of being a member of any affiliated, consolidated, combined or unitary group, or (C) any liability for amounts referred to in (A) or (B) as a result of any obligations to indemnify another person.

(B) The term "Returns" shall mean all reports, estimates, declarations of estimated tax, information statements and returns required to be filed in connection with any Taxes, including information returns with respect to backup withholding and other payments to third parties.

(ii) Except as set forth on Schedule 8(o), all Returns required to be filed by or on behalf of the Company have been duly filed on a timely basis and such Returns are true, complete and correct. All Taxes shown to be payable on such Returns or on subsequent assessments with respect thereto, and all payments of estimated Taxes required to be made by or on behalf of the Company under Section 6655 of the Code or comparable provisions of state, local or foreign law, have been paid in full on a timely basis, and no other Taxes are payable by the Company with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns). The Company has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of the Company with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that the Company is contesting in good faith through appropriate proceedings. The Company has not at any time been a member of an affiliated group of corporations filing consolidated, combined or unitary income or franchise tax returns for a period for which the statute of limitations for any Tax potentially applicable as a result of such membership has not expired other than an affiliated group the common parent of which is the Guarantor.

(iii) The amount of the Company's liabilities for unpaid Taxes for all periods through the date of the Financial Statements does not, in the aggregate, exceed the amount of the current liability accruals for Taxes reflected on the Financial Statements, and the Financial Statements properly accrue in accordance with GAAP all liabilities for Taxes of the Company payable after the date of the Financial Statements attributable to transactions and events occurring prior to such date. No liability for Taxes of the Company has been incurred or material amount of taxable income has been realized (or prior to and including the Closing will be incurred or realized) since such date other than in the ordinary course of business.

(iv) Purchaser has been furnished by the Company with true and complete copies of (i) all relevant portions of income tax audit reports, statements of deficiencies, closing or other agreements received by or on behalf of the Company relating to Taxes, and (ii) all federal, state and foreign income or franchise tax returns and state sales and use tax Returns for or including the Company for all periods since six (6) full years preceding the date of this Agreement.

(v) No audit of the Returns of or including the Company by a government or taxing authority is in process, threatened or, to the Company's knowledge, pending (either in writing or orally, formally or informally). No deficiencies exist or have been asserted (either in writing or orally, formally or informally) or are expected to be asserted with respect to Taxes of the Company, and the Company has not received notice (either in writing or orally, formally or informally) nor does it expect to receive notice that it has not filed a Return or paid Taxes required to be filed or paid. The Company is not a party to any action or proceeding for assessment or collection of Taxes, nor, to the Company's knowledge, has such event been asserted or threatened (either in writing or orally, formally or informally) against the Company, or any of its assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of the Company. The Company has disclosed on its federal and state income and franchise tax returns all positions taken therein that could give rise to a substantial understatement penalty within the meaning of Code Section 6662 or comparable provisions of applicable state tax laws.

(vi) The Company is not (nor has it ever been) a party to any tax sharing agreement. Since April 16, 1997, the Company has not been a distributing corporation or a controlled corporation in a transaction described in Section 355(a) of the Code.

(vii) The Company is not, nor has it been, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The Company is not a "consenting corporation" under Section 341(f) of the Code. The Company has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to the Company pursuant to Section 280G or 162(m) of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. The Company has not agreed to, nor is it required to make, any adjustment under Code Section 481(a) by reason of, a change in accounting method, and the Company will not otherwise have any income reportable for a period ending after the Closing attributable to a transaction or other event (e.g., an installment sale) occurring prior to the Closing with respect to which the Company received the economic benefit prior to the Closing. The Company is not, nor has it been, a "reporting corporation" subject to the information reporting and record maintenance requirements of Section 6038A and the regulations thereunder.

(viii) The Company Disclosure Schedule contains accurate and complete information regarding the Company's net operating losses for federal and each state tax purposes. The Company has no net operating losses or credit carryovers or other tax attributes currently subject to limitation under Sections 382, 383, or 384 of the Code.

(ix) The Company shall not have any liability for Taxes of any person other than the Company under (a) Treas. Reg. Section 1502-6 (or any similar provision of state, local, or foreign law), (b) as a transferee or successor, (c) by contract, or (d) otherwise.

(x) With respect to each option and share of restricted stock, the Company and the Stockholders warrant and represent that each such option has been granted with an exercise price no lower than "fair market value" (determined in accordance with Treas. Reg. Section 1.409A-1(b)(vi)) as of the grant date and that each such grant does not provide for a deferral of compensation under Code section 409A. Each Company Employee Plan (as defined in Section 8(p) hereof) that is a "nonqualified deferred compensation plan" (as defined in Code Section 409A(d)(1)) has been operated since January 1, 2005, in good faith compliance with Code Section 409A and the rules and regulations issued thereunder. No Company Employee Plan that is a "nonqualified deferred compensation plan" has been materially modified (as determined under Treas. Reg. Section 1.409A-6) after October 3, 2004. The Company is not a party to, and is not otherwise obligated under, any Contract, plan or arrangement that provides for the gross-up of the Tax imposed by Section 409A(a)(1)(B) of the Code.

(p) **Employee Benefit Plans**.

(i) Schedule 8(p) lists, with respect to the Company and any trade or business (whether or not incorporated) which is treated as a single employer with the Company (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), (ii) each loan to a non-officer employee in excess of $10,000, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section 129), life insurance or accident insurance plans, programs or arrangements, (iii) all contracts and agreements relating to employment that provide for annual compensation in excess of $100,000 and all severance agreements, with any of the directors, officers or employees of the Company (other than, in each case, any such contract or agreement that is terminable by the Company at will or without penalty or other adverse consequence), (iv) all bonus, pension, profit sharing, savings, deferred compensation or incentive plans, programs or arrangements, (v) other fringe or employee benefit plans, programs or arrangements that apply to senior management of the Company and that do not generally apply to all employees, and (vi) any current or former employment or executive compensation or severance agreements, written or otherwise, as to which unsatisfied obligations of the Company of greater than $50,000 remain for the benefit of, or relating to, any present or former employee, consultant or director of the Company (together, the "Company Employee Plans").

(ii) The Company has furnished to Purchaser a copy of each of the Company Employee Plans and related plan documents (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents, and, to the extent still in its possession, any material employee communications relating thereto) and has, with respect to each Company Employee Plan which is subject to ERISA reporting requirements, provided copies of the Form 5500 reports filed for the last three plan years. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service an opinion letter or favorable determination letter as to its initial qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation; may rely on an opinion letter issued to a prototype plan sponsor with respect to a standardized plan adopted by the Company in accordance with the requirements for such reliance; or has applied to the Internal Revenue Service for such a determination letter (or has time remaining to apply for such a determination letter) prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination with respect to all periods since the date of adoption of such Company Employee Plan. The Company has also furnished Purchaser with the most recent Internal Revenue Service determination letter issued with respect to each such the Company Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any the Company Employee Plan subject to Code Section 401(a).

(iii) Except as set forth in Section 8(p)(iii) of the Company Disclosure Schedule, (i) none of Company Employee Plans promises or provides retiree medical or other retiree welfare or life insurance benefits to any person; (ii) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, and not exempt under Section 408 of ERISA or Section 4975 of the Code, with respect to any Company Employee Plan, which could reasonably be expected to have, in the aggregate, a Material Adverse Effect; (iii) each Company Employee Plan has been administered in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), except as would not have, in the aggregate, a Material Adverse Effect, and the Company or ERISA Affiliate have performed all obligations required to be performed by them under, are not in any material respect in default, under or violation of, and have no knowledge of any material default or violation by any other party to, any of the Company Employee Plans; (iv) neither the Company nor any ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980D of the Code or Title I of ERISA with respect to any of the Company Employee Plans; (v) all material contributions required to be made by the Company or any ERISA Affiliate to any Company Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Company Employee Plan for the current plan years; (vi) with respect to each Company Employee Plan, no "reportable event" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 or ERISA has occurred; (vii) no Company Employee Plan is covered by, and neither the Company nor any ERISA Affiliate has incurred or expects to incur any direct or indirect liability under, arising out of or by operation of Title IV of ERISA in connection with the termination of, or an employee's withdrawal from, any Company Employee Plan or other retirement plan or arrangement, and no fact or event exists that could give rise to any such liability, or under Section 412 of the Code; and (viii) no compensation paid or payable to any employee of the Company has been, or will be, non-deductible by reason of application of Section 162(m) or 280G of the Code. With respect to each Company Employee Plan subject to ERISA as either an employee pension plan within the meaning of Section 3(2) of ERISA or an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, the Company has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such the Company Employee Plan. No suit, administrative proceeding, action or other litigation has been brought, or to the best knowledge of the Company is threatened, against or with respect to any such the Company Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor. Neither the Company nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any "multiemployer plan" as defined in Section 3(37) of ERISA.

(iv) With respect to each Company Employee Plan, the Company has complied with (i) the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the regulations thereunder or any similar applicable state law, (ii) the applicable requirements of the Health Insurance Portability Amendments Act ("HIPAA") and the regulations thereunder and (iii) the applicable requirements of the Family Medical Leave Act of 1993 and the regulations thereunder or any similar applicable state law, except to the extent that failure to comply would not, in the aggregate, have a Material Adverse Effect.

(v) Except as set forth on Schedule 8(p), the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee or other service provider of the Company or any ERISA Affiliate to severance benefits or any other payment (including, without limitation, unemployment compensation, golden parachute or bonus), except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting of any such benefits, or increase the amount of compensation due any such employee or service provider.

(vi) There has been no amendment to, written interpretation or announcement (whether or not written) by the Company or any ERISA Affiliate relating to, or change in participation or coverage under, any Company Employee Plan which would materially increase the expense of maintaining such Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in the Company's financial statements.

(q) **Effect on Other Certain Agreements** . Except as set forth on Schedule 8(q), neither the execution and delivery of this Agreement or the Transaction Agreements nor the consummation of the transactions contemplated hereby or thereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director or employee of the Company, (ii) materially increase any benefits otherwise payable by the Company or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

(r) **Employee Matters**.

(i) Except as set forth on Schedule 8(r), the Company is in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and is not engaged in any unfair labor practice. There are no pending claims against the Company under any workers compensation plan or policy or for long term disability. The Company does not have any material obligations under COBRA or any similar state law with respect to any former employees or qualifying beneficiaries thereunder. There are no controversies pending or, to the Company's knowledge, threatened, between the Company and any of its employees or former employees, which controversies have or could reasonably be expected to have a Material Adverse Effect on the Company. The Company is not a party to any collective bargaining agreement or other labor unions contract nor does the Company know of any activities or proceedings of any labor union or organize any such employees. The Company has not incurred any liability under, and has complied in all respects with, the Worker Adjustment Retraining Notification Act (the "WARN Act"), and no fact or event exists that could give rise to liability under the WARN Act. Section 8(r) of the Company Disclosure Schedule contains a list of all employees who are currently on a leave of absence (whether paid or unpaid), the reasons therefor, the expected return date, and whether reemployment of such employee is guaranteed by contract or statute, and a list of all employees who have requested a leave of absence to commence at any time after the date of this Agreement, the reason therefor, the expected length of such leave, and whether reemployment of such employee is guaranteed by contract or statute.

(ii) The Company is in compliance with all federal, state and local laws governing the employment and sponsorship of foreign nationals employed by the Company and is not required to make any filing with or give any notice to, or to obtain any consent from, any governmental body in connection with employment by the Company of any employee who is a foreign national. There is no pending legal proceeding, and no governmental agency has threatened to commence any legal proceeding, against the Company or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with the employment by the Company of any employee who is a foreign national. There is no order, writ, injunction or decree which has been entered against the Company preventing or delaying the employment by the Company of any employee who is a foreign national.

(s) **Material Contracts**.

(i) Section 8(s)(i) of the Company Disclosure Schedule contains a list of all contracts and agreements to which the Company is a party and that are material to the business, results of operations, or condition (financial or otherwise), of the Company (such contracts, agreements and arrangements as are required to be set forth in Section 8(s)(i) of the Company Disclosure Schedule being referred to herein collectively as the "Material Contracts"). "Material Contracts" shall include, without limitation, the following and shall be categorized in the Company Disclosure Schedule as follows:

(A) each contract and agreement (other than routine purchase orders and pricing quotes in the ordinary course of business covering a period of less than one year) for the purchase of inventory, spare parts, other materials or personal property with any supplier or for the furnishing of services to the Company under the terms of which the Company: (A) paid or otherwise gave consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(B) each customer contract and agreement (other than routine purchase orders, pricing quotes with open acceptance and other tender bids, in each case, entered into in the ordinary course of business and covering a period of less than one year) to which the Company is a party which (A) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(C) (A) all distributor, manufacturer's representative, broker, franchise, agency and dealer contracts and agreements to which the Company is a party (specifying on a matrix, in the case of distributor agreements, the name of the distributor, product, territory, termination date and exclusivity provisions) and (B) all sales promotion, market research, marketing and advertising contracts and agreements to which the Company is a party which: (1) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008 or (2) are likely to involve consideration of more than $5,000.00 in the aggregate over the remaining term of the contract;

(D) all management contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which (A) involved consideration or more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract, or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(E) all contracts and agreements (excluding routine checking account overdraft agreements involving petty cash amounts) under which the Company has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness or under which the Company has imposed (or may impose) a security interest or lien on any of their respective assets, whether tangible or intangible, to secure indebtedness;

(F) all contracts and agreements that limit the ability of the Company to compete in any line of business or with any person or in any geographic area or during any period of time, or to solicit any customer or client;

(G) all contracts and agreements between or among the Company, on the one hand, and any affiliate of the Company, on the other hand:

(H) all contracts and agreements to which the Company is a party under which it has agreed to supply products to a customer at specified prices, whether directly or through a specific distributor, manufacturer's representative or dealer; and

(I) all other contracts or agreements (A) which are material to the Company or the conduct of their respective businesses or (B) the absence of which would have a Material Adverse Effect on the Company or (C) which are believed by the Company to be of unique value even though not material to the business of the Company.

(ii) Except as would not, individually or in the aggregate, have a Material Adverse Effect on the Company, each Company license and each Material Contract, is a legal, valid and binding agreement, and none of the Company licenses or Material Contracts is in default by its terms or has been canceled by the other party; the Company is not in receipt of any claim of default under any such agreement; and the Company does not anticipate any termination of or change to, or receipt of a proposal with respect to, any such agreement as a result of the transactions contemplated by this Agreement. The Company has furnished Purchaser with true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

(t) **Interested Party Transactions**. Except as set forth on Schedule 8(t), the Company is not directly or indirectly indebted to any director, officer, employee or agent of the Company (each of the foregoing, an "Interested Party") (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), nor is the Company directly or indirectly indebted to any members of the immediate families of any Interested Party, and no such Interested Parties or members of their immediate families are directly or indirectly indebted to the Company. No Interested Parties have any direct or indirect ownership or financial interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that Interested Parties and members of their families may own stock in (but not exceeding two percent (2%) of the outstanding capital stock of) any publicly traded companies that may compete with the Company. No Interested Party or any members of their immediate families are, directly or indirectly, interested in any material contract with the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

(u) **Insurance**. The Company has policies of insurance and bonds of the type and in the amounts customarily carried by persons conducting businesses or owning assets similar to those of the Company. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and the Company is otherwise in compliance with the terms of such policies and bonds. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

(v) **Compliance With Laws**. The Company has complied with, is not in violation of, and has not received any notices of violation with respect to, any federal, state, local or foreign statute, law or regulation with respect to the conduct of its business, or the ownership or operation of its business, except for such violations or failures to comply as could not reasonably be expected to have a Material Adverse Effect on the Company.

(w) **Minute Books**. The minute books of the Company made available to Purchaser contain a complete summary of all meetings of directors and stockholders or actions by written consent since the time of incorporation of the Company through the date of this Agreement, and reflect all transactions referred to in such minutes accurately in all material respects.

(x) **Complete Copies of Materials**. The Company has delivered or made available true and complete copies of each document which has been requested by Purchaser or its counsel in connection with their legal and accounting review of the Company.

(y) **Brokers' and Finders' Fees**. The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transaction contemplated hereby.

(z) **Board and Stockholder Approval**. The Board of Directors of the Company has unanimously (i) approved this Agreement and the Transaction Agreements and the transactions contemplated hereunder and thereunder, and (ii) determined that the purchase of the Securities by Purchaser is in the best interests of the stockholders of the Company. Guarantor has obtained Proxies from the Majority Stockholders.

(aa) **Inventory**. The inventories shown on the Financial Statements or thereafter acquired by the Company consist of items of a quantity and quality usable or salable in the ordinary course of business. Since January 31, 2009, the Company has continued to replenish inventories in a normal and customary manner consistent with past practice. The Company has not received written or oral notice that it will experience in the foreseeable future any difficulty in obtaining, in the desired quantity and quality and at a reasonable price and upon reasonable terms and conditions, the raw materials, supplies or component products required for the manufacture, assembly or production of its products. The values at which inventories are carried reflect the inventory valuation policy of the Company, which is consistent with its past practice and in accordance with GAAP applied on a consistent basis. Due provision has been made on the books of the Company in the ordinary course of business consistent with past practice to provide for all slow-moving, obsolete, or unusable inventories at their estimated useful scrap values and such inventory reserves are adequate to provide for such slow-moving, obsolete or unusable inventory and inventory shrinkage.

(bb) **Accounts Receivable**.

(i) The Company has made available to Purchaser a list of all accounts receivable of the Company reflected on the Financial Statements ("Accounts Receivable") along with a range of days elapsed since invoice.

(ii) All Accounts Receivable of the Company arose in the ordinary course of business and are carried at values determined in accordance with GAAP consistently applied. No person has any lien on any of such Accounts Receivable and no request or agreement for deduction or discount has been made with respect to any of such Accounts Receivable.

(iii) All of the inventories of the Company reflected in the Financial Statements and the Company's books and records on the date hereof were purchased, acquired or produced in the ordinary and regular course of business and in a manner consistent with the Company's regular inventory practices and are set forth on the Company's books and records in accordance with the practices and principles of the Company consistent with the method of treating said items in prior periods. None of the inventory of the Company reflected on the Financial Statements or on the Company's books and records as of the date hereof (in either case net of the reserve therefor) is obsolete, defective or in excess of the needs of the business of the Company reasonably anticipated for the normal operation of the business consistent with past practice and outstanding customer contracts. The presentation of inventory on the Financial Statements conforms to GAAP and such inventory is stated at the lower of cost or net realizable value.

(cc) **Customers and Suppliers**. As of the date hereof, no customer which individually accounted for more than ten percent (10%) of the Company's gross revenues during the twelve (12) month period preceding the date hereof, and no supplier of the Company, has canceled or otherwise terminated, or made any written threat to the Company to cancel or otherwise terminate its relationship with the Company, or has at any time on or after December 31, 2008 decreased materially its services or supplies to the Company in the case of any such supplier, or its usage of the services or products of the Company in the case of such customer, and to the Company's knowledge, no such supplier or customer intends to cancel or otherwise terminate its relationship with the Company or to decrease materially its services or supplies to the Company or its usage of the services or products of the Company, as the case may be. From and after the date hereof, no customer which individually accounted for more than ten percent (10%) of the Company's gross revenues during the twelve (12) month period preceding the Closing, has canceled or otherwise terminated, or made any written threat to the Company to cancel or otherwise terminate, for any reason, including without limitation the consummation of the transactions by this Agreement, its relationship with the Company, and to the Company's knowledge, no such customer intends to cancel or otherwise terminate its relationship with the Company or to decrease materially its usage of the services or products of the Company. The Company has not knowingly breached, so as to provide a benefit to the Company that was not intended by the parties, any agreement with, or engaged in any fraudulent conduct with respect to, any customer or supplier of the Company.

(dd) **Third Party Consents**. The Company shall have obtained all consents or approvals needed from any third party in order to effect this Agreement or any of the transactions contemplated hereby.

(ee) **No Commitments Regarding Future Products.** The Company has made no sales to customers that are contingent upon providing future enhancements of existing products, to add features not presently available on existing products or to otherwise enhance the performance of its existing products (other than beta or similar arrangements pursuant to which the Company's customers from time to time test or evaluate products). The products the Company has delivered to customers substantially comply with published specifications for such products and the Company has not received material complaints from customers about its products that remain unresolved. Section 8(ee) of the Company Disclosure Schedule accurately sets forth a complete list of products in development (exclusive of mere enhancements to and additional features for existing products).

(ff) **Representations Complete**. None of the representations or warranties made by the Company in this Agreement or in any attachment hereto, including the Company Disclosure Schedule, or certificate furnished by the Company pursuant to this Agreement, when all such documents are read together in their entirety, contains or will contain at the Closing any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

9. **Representations and Warranties of the Guarantor.** Guarantor hereby represents and warrants to the Purchaser that:

(a) **Organization, Good Standing and Qualification.** The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

(b) **Authorization.** All corporate action on the part of the Guarantor, its officers, directors and stockholders necessary for the authorization, execution and delivery of the Transaction Agreements and the performance of all obligations of the Guarantor hereunder and thereunder has been taken or will be taken prior to the Closing. The Transaction Agreements, when executed and delivered by the Guarantor, shall constitute valid and legally binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

10. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to the Company that:

(a) **Purchase Entirely for Own Account.** The Securities to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. The Purchaser has not been formed for the specific purpose of acquiring any of the Securities.

(b) **Knowledge.** The Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities.

(c) **Restricted Securities.** The Purchaser understands that the Securities have not been, and will not be, registered under the Securities Act of 1933, as amended (the "Securities Act"), by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(d) **No Public Market.** The Purchaser understands that no public market now exists for any of the securities issued by the Company, that the Company has made no assurances that a public market will ever exist for the Securities.

(e) **Legends.** The Purchaser understands that the Securities, and any securities issued in respect thereof or exchange therefor, may bear one or all of the following legends:

(i) "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

(ii) Any legend required by the Blue Sky laws of any state to the extent such laws are applicable to the shares represented by the certificate so legended.

(f) **Accredited Investor.** The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

11. **Conditions of the Purchaser's Obligations at Closing.** The obligations of the Purchaser to the Company under this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived:

(a) **Execution and Delivery of Transaction Agreements**. The Company and/or the Guarantor (if applicable) shall have executed and delivered the Transaction Agreements to the Purchaser.

(b) **Representations and Warranties.** The representations and warranties of the Company contained in Section 8 and the representations of the Guarantor contained in Section 9 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

(c) **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing.

(d) **Amended Certificate**. The Company shall have delivered to Purchaser the Amended Certificate.

12. **Conditions of the Company's Obligations at Closing.** The obligations of the Company to the Purchaser under this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived:

(a) **Representations and Warranties.** The representations and warranties of the Purchaser contained in Section 10 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

(b) **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing.

(c) **Delivery of Form W-8 BEN or Form W-9**. The Purchaser shall have completed and delivered to the Company a validly executed IRS Form W-8 BEN or IRS Form W-9, as applicable, which forms are attached as Exhibit G to this Agreement.

13. **Default.**

(a) **Events of Default**. The occurrence of any one or more of the following events, conditions or state of affairs shall constitute an Event of Default hereunder and under the Note:

(i) The Company shall fail to pay as and when due any principal or interest under the Note or the Credit Agreement.

(ii) If the Company or the Guarantor shall breach or default in connection with any of the representations, warranties, covenants or obligations contained the Transaction Agreements.

(iii) If the Company makes an assignment for the benefit of creditors generally, offers a composition or extension to creditors, or makes or sends notice of an intended bulk sale of any business or assets now or hereafter owned or conducted by the Company.

(iv) Upon the commencement of any action for the dissolution or liquidation of the Company, or the commencement of any case or proceeding for reorganization or liquidation of the Company's debts under Title 11 of the United States Code as now or hereafter in effect, or any successor statute, or any other state or federal law, now or hereafter enacted for the relief of debtors, whether instituted by or against the Company; provided, however, that the Company shall have sixty (60) days to obtain the dismissal or discharge of any involuntary proceeding filed against it and the Agent may seek adequate protection in any bankruptcy proceeding.

(v) Upon the appointment of a receiver, liquidator, custodian, trustee or similar official or fiduciary for the Company or for a material portion of any property of the Company.

14. **Miscellaneous.**

(a) **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(c) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(d) **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(e) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(f) **Finder's Fee.** Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. The Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which the Purchaser or any of its officers, employees, or representatives is responsible. The Company and the Guarantor agree to indemnify and hold harmless the Purchaser from any liability for any commission or compensation in the nature of a finder's fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company, the Guarantor or any of their respective officers, employees or representatives is responsible.

(g) **Amendments and Waivers.** Any term of this Agreement may only be amended with the written consent of the parties hereto. Any amendment or waiver effected in accordance with this Section 14(g) shall be binding upon the Purchaser and each transferee of the Securities, each future holder of all such Securities, and the Company.

(h) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(i) **Entire Agreement.** This Agreement, and the documents referred to herein constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the parties hereto are expressly canceled.

(j) **Exculpation Among Purchasers.** The Purchaser acknowledges that it is not relying upon any person, firm or corporation, other than (a) the Company and its officers and directors, and (b) the Guarantor and its officers and directors in making its investment or decision to invest in the Company.

(k) **Corporate Securities Law**. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED UNLESS THE SALE IS SO EXEMPT.

The parties have executed this Convertible Note Purchase Agreement as of the date first written above.

**COMPANY:**

UCA Services, Inc., d/b/a Netfabric Technologies, Inc.

By:/s/ _____
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**GUARANTOR:**

Netfabric Holdings, Inc.

By:/s/ _____
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**PURCHASER:**

Fortify Infrastructure Services, Inc.

By:/s/ _____

Name: Rajkumar Velagapudi

Address: 2340 Walsh Avenue, Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

LIST OF SCHEDULES/EXHIBITS

| | |
|---|---|
| Schedule l - | Schedule of Liabilities/Creditors to be Paid at Closing |
| Schedule 2- | Amended Certificate |
| Exhibit A - | Form of Promissory Note |
| Exhibit B - | Credit Agreement |
| Exhibit C - | Security Agreement |
| Exhibit D - | Pledge Agreement |
| Exhibit E - | Option Agreement |
| Exhibit F - | Form of Proxy |
| Exhibit G - | W-9 |

SCHEDULE 1

SCHEDULE OF LIABILITIES

At Closing, the creditors of the Company set forth below shall be paid by Purchaser the amounts set forth opposite their names, representing payment in full of the total amount of liabilities and indebtedness of the Company outstanding as of the Closing Date:

| Name and Address | Amount |
| --- | --- |

EXHIBIT A

**FORM OF CONVERTIBLE PROMISSORY NOTE**

EXHIBIT B

**CREDIT AGREEMENT**

EXHIBIT C

**SECURITY AGREEMENT**

EXHIBIT D

**PLEDGE AGREEMENT**

EXHIBIT E

**OPTION AGREEMENT**

EXHIBIT F

**FORM OF PROXY**

EXHIBIT G

**FORM W-9**

Non-Profiled Document

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

**SECURED CONVERTIBLE PROMISSORY NOTE**

$5,000,000.00 March 12, 2009
Parsippany, NJ

For value received, UCA Services, Inc., d/b/a Netfabric Technologies, Inc., a New Jersey corporation (the "Company"), promises to pay to Fortify Infrastructure Services, Inc., a Delaware corporation (the "Holder"), the principal sum of Five Million Dollars ($5,000,000.00). Interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to eight percent (8%) per annum, compounded annually. This Note is subject to the following terms and conditions.

1. **Maturity.** Unless converted as provided in Section 2, this Note will automatically mature and be due and payable on the date which is six (6) months from the date of issuance (the "Maturity Date"). Interest shall accrue on this Note and shall be paid monthly. Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Company.

2. **Conversion.**

(a) **Investment by the Holder.** At the exclusive option of Holder, the entire principal amount of and accrued and unpaid interest on this Note shall be converted into shares of Series A Preferred Stock of the Company (the "Equity Securities"). The conversion price shall be at a price equal to the price per share reflecting a valuation of the Company equal to Five Million Dollars ($5,000,000.00), on an as-converted basis.

(b) **Mechanics and Effect of Conversion.** Holder shall designate in writing its intention to convert this Note into Equity Securities of the Company. Upon receiving such notice, the Company shall, within two (2) days thereafter file a certificate of designation with the Secretary of State of New Jersey, in substantially the form attached hereto as Exhibit A (the "Certificate of Designation"), which sets forth the rights, preferences and privileges of the Equity Securities to be issued to Holder hereunder. No fractional shares of the Company's capital stock will be issued upon conversion of this Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share. Upon conversion of this Note pursuant to this Section 2, the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, a certificate or certificates for the number of shares to which such Holder is entitled upon such conversion, together with an other securities and property to which the Holder is entitled upon such conversion under the terms of this Note, including a check payable to the Holder for any cash amounts payable as described herein. Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with regard to that portion of the principal amount and accrued interest being converted including without limitation the obligation to pay such portion of the principal amount and accrued interest.

3. **Payment.**

(a) All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to the accrued interest then due and payable and the remainder applied to principal.

(b) The Company may not prepay this Note.

4. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Notwithstanding the foregoing, neither party may assign, pledge, or otherwise transfer this Note without the prior written consent of the other party, except for transfers to affiliates. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

5. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

6. **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

7. **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Company and the Holder. Any amendment or waiver effected in accordance with this Section 7 shall be binding upon the Company, the Holder and each transferee of the Note.

8. **Officers and Directors Not Liable.** In no event shall any officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

9. **Security Interest and Guarantee.** This Note is secured by (i) all of the assets of the Company and Guarantor in accordance with a separate security agreement (the "Security Agreement") of even date herewith between the Company and the Holder, and (ii) all of equity securities of the Company currently owned or hereafter acquired by the Guarantor in accordance with the provisions of a stock pledge agreement (the "Pledge Agreement") of even date herewith. In case of an Event of Default (as defined in the Security Agreement and the Pledge Agreement), the Holder shall have the rights set forth in the Security Agreement and the Pledge Agreement, respectively.

10. **Action to Collect on Note.** If action is instituted to collect on this Note, the Company promises to pay all costs and expenses, including reasonable attorney's fees, incurred in connection with such action.

11. **Note Purchase Agreement.** This Note shall incorporate all of the terms and conditions contained the Note Purchase Agreement of even date herewith.

[SIGNATURE PAGE FOLLOWS]

**COMPANY:**

UCA Services, Inc., d/b/a Netfabric Technologies, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**GUARANTOR:**

Netfabric Holdings, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**AGREED TO AND ACCEPTED:**

Fortify Infrastructure Services, Inc.

By: /s/

Name: Rajkumar Velagapudi, President and CEO

Address: 2340 Walsh Avenue, Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

**DATED: MARCH 12, 2009**

**NETFABRIC HOLDINGS, INC.**

**NETFABRIC TECHNOLOGIES, INC., D/B/A UCA SERVICES, INC.**

**and**

**FORTIFY INFRASTRUCTURE SERVICES, INC.**

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# CREDIT AGREEMENT

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This Credit Agreement (the "Agreement") is made as of the 12th day of March, 2009 (the "Effective Date"), by and among NetFabric Technologies, Inc., d/b/a UCA Services, Inc., a New Jersey corporation (the "Borrower"), NetFabric Holdings Inc., a Delaware corporation (the "Guarantor") and Fortify Infrastructure Services, Inc., a Delaware corporation (the "Lender"). Borrower, Guarantor and Lender are each referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, Borrower desires and has requested from Lender a credit facility pursuant to which up to $1,000,000.00 can be borrowed from time to time on a secured basis as set forth herein; and

WHEREAS, Lender is willing to accommodate the request for credit upon and subject to the terms, conditions and provisions of the this Agreement, provided, however, that the obligations of Borrower hereunder are guaranteed in full by Guarantor as provided herein.

**AGREEMENT**

In consideration of the mutual promises contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

**1. THE LOAN**

1.1 The Lender hereby agrees to loan Borrower up to $1,000,000.00 upon the terms and subject to the conditions of this Agreement (the "**Loans**"). The Loans, when drawn pursuant to this Agreement, shall be made by wire transfer of immediately funds.

1.2 Subject to Section 1.4, the Loans can be drawn down by the Borrower from the Lender at such times and in such amounts as may be reasonably required by the Borrower for working capital purposes.

1.3 Subject to Section 1.4, the Loans may be drawn down by the Borrower by providing written notice to the Lender in the form of Exhibit 1 hereto (a "**Drawdown Notice**"). Each Drawdown Notice shall set forth (i) the amount of the Loan to be drawn down (the "**Drawdown Amount**"), which amount, in the aggregate, shall not be more than the amount provided in Section 1.1, and (ii) the date (the "**Drawdown Date**") on which the Drawdown Amount is to be provided by the Lender to the Borrower, which date shall not be less than five (5) Business Days following the date on which the Lender receives the Drawdown Notice.

1.4 The Lender shall not be obligated to provide any part of the Loan pursuant to a Drawdown Notice if an Event of Default (as defined below) has occurred.

**2. THE LOAN NOTES**

The Loans shall be evidenced by notes issued by the Borrower to the Lender substantially in the form of Exhibit 2 hereto (the "**Loan Notes**"). A Loan Note shall be issued by the Borrower to the Lender on the date of the advance by the Lender of a Loan pursuant hereto.

**3. PURPOSE OF THE LOANS**

The Borrower shall utilize all amounts borrowed by it under this Agreement to meet its working capital requirements.

**4. INTEREST**

Any amounts borrowed under this Agreement shall bear interest at a rate of eight percent (8%) per annum, compounded annually.

**5. REPAYMENT**

All amounts borrowed (principal and accrued interest) under this Agreement will automatically mature and be due and payable on the third ($3^{rd}$) anniversary of the Effective Date (the "**Maturity Date**"). Subject to the provisions of the Loan Notes, interest shall accrue, at a rate of eight percent (8%) per annum, from the date specified in the Loan Note on the principal balance specified therein but shall not be due and payable until the Maturity Date. Notwithstanding the foregoing, the entire unpaid principal sum of the Loans, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Borrower, the commission of any act of bankruptcy by the Borrower, the execution by the Borrower of a general assignment for the benefit of creditors, the filing by or against the Borrower of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Borrower.

**6. SECURITY AND GUARANTY**

The indebtedness represented by the Loan Notes and the Convertible Promissory Note of even date herewith (the "**Note**") and all of the Borrower's obligations arising under (a) the Note, (b) the convertible note purchase agreement by and among Borrower, Lender and Guarantor of even date herewith (the "**Note Purchase Agreement**") and (c) and Loan Notes shall be secured by (i) all of the assets of the Borrower and the Guarantor in accordance with the provisions of the security agreement of even date herewith (the "**Security Agreement**"), and (ii) a pledge by the Guarantor of all of the equity securities of the Borrower currently owned or hereafter acquired by the Guarantor (the "**Shares**") in accordance with the provisions of a stock pledge agreement of even date herewith (the "**Pledge Agreement**"). Notwithstanding the foregoing, upon the close of the Acquisition (as defined below), Guarantor shall be released from its obligations hereunder.

**7. OPTION AGREEMENT**

In connection with the execution of this Agreement, the Note, the Security Agreement and the Pledge Agreement, the Guarantor and the Lender shall enter into an option agreement (the "**Option Agreement**") of even date herewith, pursuant to which Guarantor shall grant to the Lender the option to purchase the Shares in accordance with the terms and conditions set forth in the Option Agreement (the "**Acquisition**").

**8. MAJORITY STOCKHOLDER PROXY.**

This Agreement, the Option Agreement, the Security Agreement, the Pledge Agreement, the Operating Plan, the Note and the Note Purchase Agreement are collectively referred to herein as the "**Transaction Agreements**." In connection with the transactions contemplated by the Option Agreement, Guarantor shall obtain and deliver to the Lender a stockholder agreement and irrevocable proxy (the "**Proxy**") from the Guarantor's stockholders holding at least 51% of the outstanding stock (the "**Majority Stockholders**") of the Guarantor, evidencing the consent by the Majority Stockholders to the Acquisition and the related transactions contemplated by the Transaction Agreements.

**9. CURRENCY**

The Loans shall be made in United States dollars and all payments under the Loan Notes shall be in United States dollars.

**10. COVENANTS**

The Borrower covenants and agrees that, until payment in full of all amounts payable by the Borrower hereunder:

10.1 promptly after the Borrower knows that any Event of Default has occurred, the Borrower shall deliver to the Lender a notice thereof describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that the Borrower has taken or proposes to take with respect thereto; and

10.2 the Borrower shall: (i) preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises; (ii) comply with the requirements of all applicable laws, rules, regulations and orders of governmental or regulatory authorities; (iii) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; and (iv) keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied.

10.3 As long as any portion of the Loans is outstanding, and except as contemplated in the Transaction Agreements, the Borrower shall not, without the prior written consent of the Lender incur any indebtedness or obligation in excess of Twenty Five Thousand Dollars ($25,000.00) or act as a guarantor or surety for any indebtedness or obligation for any party (including Guarantor).

10.4 As long as any portion of the Loans is outstanding, the Borrower shall provide the Lender with (i) monthly unaudited financial statements (balance sheet, statement of operations and statement of cash flows), and (ii) upon Lender's request, the right to review and inspect the Borrower's books and records provided however that Lender shall give the Borrower forty-eight (48) hours notice of such request.

10.5 As long as any portion of the Loans is outstanding, the Borrower shall not remit any dividends or make any distribution of cash or property to the Guarantor with respect to the stock of the Borrower or otherwise make any advance to Guarantor.

**11. EVENTS OF DEFAULT.**

11.1 The Borrower shall fail to pay as and when due any principal or interest under the Note or this Agreement.

11.2 If the Borrower or the Guarantor shall materially breach or default in connection with any of the representations, warranties, covenants or obligations contained in the Transaction Agreements.

11.3 If the Borrower makes an assignment for the benefit of creditors generally, offers a composition or extension to creditors, or makes or sends notice of an intended bulk sale of any business or assets now or hereafter owned or conducted by the Borrower.

11.4 Upon the commencement of any action for the dissolution or liquidation of the Borrower, or the commencement of any case or proceeding for reorganization or liquidation of the Borrower's debts under Title 11 of the United States Code as now or hereafter in effect, or any successor statute, or any other state or federal law, now or hereafter enacted for the relief of debtors, whether instituted by or against the Borrower; provided, however, that the Borrower shall have sixty (60) days to obtain the dismissal or discharge of any involuntary proceeding filed against it.

11.5 Upon the appointment of a receiver, liquidator, custodian, trustee or similar official or fiduciary for the Borrower or for a material portion of any property of the Borrower.

## 12. REPRESENTATIONS AND WARRANTIES OF BORROWER

In this Agreement, any reference to any event, change, condition or effect being "material" with respect to any entity or group of entities means any material event, change, condition or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of such entity or group of entities. In this Agreement, any reference to a "**Material Adverse Effect**" with respect to any entity or group of entities means any event, change or effect that, when taken individually or together with all other adverse changes and effects, is or is reasonably likely to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, operations, results of or prospects of such entity and its subsidiaries, taken as a whole, or to prevent or materially delay consummation of the transactions contemplated under this Agreement or otherwise to prevent such entity and its subsidiaries from performing their obligations under this Agreement.

In this Agreement, any reference to "**knowledge**" means an individual will be deemed to have knowledge of a particular fact or other matter if: (i) that individual is actually aware of that fact or matter; or (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonable comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. A party (that is not an individual) will be deemed to have knowledge of a particular fact or other matter if any individual who is serving as a director, officer, executive or manager, partner, executor or trustee of that party (or in any similar capacity) has, or at any time had, knowledge of that fact or other matter (as set forth in (i) and (ii) of this definition), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that party or individual.

Except as disclosed in a document of the same date as this Agreement and delivered by the Borrower to Lender prior to the execution and delivery of this Agreement and referring to the representations and warranties in this Agreement (the "**Borrower Disclosure Schedule**"), the Borrower represents and warrants to Lender as of the Effective Date**:**

12.1 **Organization Standing and Power; Subsidiaries**. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey. The Borrower has the requisite corporate power and authority and all necessary government approvals to own, lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted, except where the failure to have such power, authority and governmental approvals would not, individually or in the aggregate, have a Material Adverse Effect on the Borrower. The Borrower is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that would not, individually or in the aggregate, have a Material Adverse Effect on the Borrower. Except as set forth on Schedule 12.1, the Borrower currently has no subsidiaries and has had no subsidiaries since its inception. Other than the transactions contemplated in the Transaction Agreements, there are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock of the Borrower, or otherwise obligating the Borrower to issue, transfer, sell, purchase, redeem or otherwise acquire any such securities. Except as set forth in the Borrower Disclosure Schedule, the Borrower does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity.

12.2 **Certificate of Incorporation and Bylaws**. The Borrower has delivered a true and correct copy of its Certificate of Incorporation and Bylaws or other charter documents, each as amended to date, to Lender. The Borrower is not in violation of any of the provisions of its Certificate of Incorporation or Bylaws or equivalent organizational documents.

12.3 **Capital Structure**. The authorized capital stock of the Borrower consists of 5,000,000 shares of Common Stock, of which there are issued and outstanding as of the close of business on the date hereof, 3,000,000 shares of Common Stock. There are no other outstanding shares of capital stock or voting securities and no outstanding commitments to issue any shares of capital stock or voting securities of the Borrower. All outstanding shares of the Borrower's capital stock are duly authorized, validly issued, fully paid and non-assessable and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof, and are not subject to preemptive rights or rights of first refusal created by statute, the Certificate of Incorporation or Bylaws of the Borrower or any agreement to which the Borrower is a party or by which it is bound. All outstanding shares of the Borrower's Common Stock were issued in compliance with all applicable federal and state securities laws. As of the close of business on the Effective Date, the Company has not reserved, issued or granted any shares of Common Stock for issuance to employees and consultants pursuant to a Company Stock Plan (the "Plan"). Except (i) for the rights created pursuant to this Agreement, (ii) for the Borrower's right to repurchase any unvested shares under the Plan and (iii) as set forth in this Section 12.3, there are no options, warrants, calls, rights, commitments, agreements or arrangements of any character to which the Borrower is a party or by which the Borrower is bound relating to the issued or unissued capital stock of the Borrower or obligating the Borrower to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of capital stock of the Borrower or obligating the Borrower to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no contracts, commitments or agreements relating to voting, purchase or sale of the Borrower's capital stock (i) between or among the Borrower and any of its stockholders and (ii) between or among any of the Borrower's stockholders. True and complete copies of all agreements and instruments relating to or issued under the Plan have been made available to Lender and such agreements and instruments have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments in any case from the form made available to Lender.

12.4 **Authority**. The Borrower has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Borrower. The Borrower's Board of Directors has approved this Agreement and all of Borrowers obligations hereunder. This Agreement has been duly executed and delivered by the Borrower and assuming due authorization, execution and delivery by Lender, constitutes the valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms.

12.5 **No Conflicts; Required Filings and Consents**.

(a) The execution and delivery of this Agreement by the Borrower does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (i) any provision of the Certificate of Incorporation or Bylaws of the Borrower or any of its subsidiaries, as amended, or (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Borrower or any of its properties or assets.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality ("**Governmental Entity**") is required by or with respect to the Borrower in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws; and (ii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not have a Material Adverse Effect on the Borrower and would not prevent, or materially alter or delay any of the transactions contemplated by this Agreement and the Transaction Agreements.

12.6 **Financial Statements.** Section 12.6 of the Borrower Disclosure Schedule includes a true, correct and complete copy of the Borrower's audited financial statements for the fiscal year ended December 31, 2006, a draft copy of the Borrower's audited financial statements for the fiscal year ended December 31, 2007, a draft of its unaudited financial statements (balance sheet, statement of operations and statement of cash flows) on a consolidated basis as of September 30, 2008, and a draft of the Borrower's unaudited financial statements (balance sheet, statement of operations and statement of cash flows) as of December 31, 2008 (collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**") (except that the unaudited financial statements do not have notes thereto) applied on a consistent basis throughout the periods indicated and with each other. The Financial Statements accurately set out and describe the financial condition and operating results of the Borrower as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments. The Borrower maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

12.7 **Absence of Undisclosed Liabilities**. Except as set forth in Schedule 12.7, the Borrower has no material obligations or liabilities of any nature (matured or unmatured, fixed or contingent) other than (i) those set forth or adequately provided for in the Balance Sheet for the period ended December 31, 2008 (the "**Borrower Balance Sheet**"), (ii) those incurred in the ordinary course of business and not required to be set forth in the Borrower Balance Sheet under GAAP, (iii) those incurred in the ordinary course of business since the Borrower Balance Sheet Date and consistent with past practice, and (iv) those incurred for professional fees in connection with the execution of this Agreement.

12.8 **Absence of Certain Changes**. Except as set forth in Section 12.8 of the Borrower Disclosure Schedule, since December 31, 2008 ( the "**Borrower Balance Sheet Date**") there has not been, occurred or arisen any:

(a) transaction by the Borrower, other than transactions in connection with elimination of inter company accounts, except in the ordinary course of business as conducted on that date and consistent with past practices;

(b) amendments or changes to the Certificate of Incorporation or Bylaws of the Borrower (except as contemplated by the Transaction Agreements);

(c) capital expenditure or commitment by the Borrower in any individual amount exceeding $10,000.00 or in the aggregate, exceeding $50,000.00;

(d) destruction of, damage to, or loss of any assets (including, without limitation, intangible assets), business or customer of the Borrower (whether or not covered by insurance) which would constitute a Material Adverse Effect;

(e) labor trouble or claim of wrongful discharge or other unlawful labor practice or action;

(f) change in accounting methods or practices (including any change in depreciation or amortization policies or rates, any change in policies in making or reversing accruals) by the Borrower;

(g) revaluation by the Borrower of any of its assets;

(h) declaration, setting aside, or payment of a dividend or other distribution in respect to the capital stock of the Borrower, or any direct or indirect redemption, purchase or other acquisition by the Borrower of any of its capital stock, except repurchases of the Borrower Common Stock from terminated Borrower employees or consultants at the original per share purchase price of such shares;

(i) increase in the salary or other compensation payable or to become payable by the Borrower to any officers, directors, employees or consultants of the Borrower, except in the ordinary course of business consistent with past practice, or the declaration, payment, or commitment or obligation of any kind for the payment by the Borrower of a bonus or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement, or other than as set forth in Section 12.16 below, the establishment of any bonus, insurance, deferred compensation, pension, retirement, profit sharing, stock option (including without limitation, the granting of stock options, stock appreciation rights, performance awards), stock purchase or other employee benefit plan;

(j) sale, lease, license or other disposition of any of the assets or properties of the Borrower, except in the ordinary course of business and not in excess of $10,000.00, in the aggregate;

(k) termination or material amendment of any material contract, agreement or license (including any distribution agreement) to which the Borrower is a party or by which it is bound;

(l) loan by the Borrower to any person or entity, or guaranty by the Borrower of any loan, except for (i) travel or similar advances made to employees in connection with their employment duties in the ordinary course of business, consistent with past practice and (ii) trade payables not in excess of $50,000.00 in the aggregate and in the ordinary course of business, consistent with past practice;

(m) waiver or release of any right or claim of the Borrower, except for inter company balances and doubtful allowances, including any write-off or other compromise of any account receivable of the Borrower in excess of $50,000.00 in the aggregate;

(n) commencement or notice or threat of commencement of any lawsuit or proceeding against or, to the Borrower's or the Borrower's officers' or directors' knowledge, investigation of the Borrower or its affairs;

(o) to Borrower's knowledge, notice of any claim of ownership by a third party of the Borrower's Intellectual Property (as defined in Section 12.13 below) or, to the Borrower's knowledge, of infringement by the Borrower of any third party's Intellectual Property rights;

(p) issuance or sale by the Borrower of any of its shares of capital stock, or securities exchangeable, convertible or exercisable therefor, or of any other of its securities, other than as contemplated by the Transaction Agreements;

(q) material changes in pricing or royalties set or charged by the Borrower to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Borrower;

(r) to Borrower's knowledge, any event or condition of any character that has or could reasonably be expected to have a Material Adverse Effect on the Borrower; or

(s) agreement by the Borrower, or any of its officers or employees on its behalf to do any of the things described in the preceding clauses (a) through (r) (other than negotiations with Lender and its representatives regarding the transactions contemplated by this Agreement).

12.9 **Litigation**. Except as set forth on Schedule 12.9, there is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or, to the Borrower's knowledge, threatened against the Borrower or any of its properties or any of its officers or directors (in their capacities as such) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Borrower. There is no judgment, decree or order against the Borrower or, to the Borrower's knowledge, any of its directors or officers (in their capacities as such), that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement, or that could reasonably be expected to have a Material Adverse Effect on the Borrower. All litigation to which the Borrower is a party (or, to the knowledge of the Borrower, threatened to become a party) is disclosed in the Borrower Disclosure Schedule.

12.10 **Restrictions on Business Activities**. There is no agreement, judgment, injunction, order or decree binding upon the Borrower which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current or future business practice of the Borrower, any acquisition of property by the Borrower or the overall conduct of business by the Borrower as currently conducted or as proposed to be conducted by the Borrower. The Borrower has not entered into any agreement under which it is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

12.11 **Permits; Borrower Products; Regulation**.

(a) The Borrower is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders necessary for the Borrower to own, lease and operate its properties or to carry on its business as it is now being conducted (the "**Borrower Authorizations**") and no suspension or cancellation of any Borrower Authorization is pending or, to the Borrower's knowledge, threatened, except where the failure to have, or the suspension or cancellation of, any Borrower Authorization would not have a Material Adverse Effect on the Borrower. The Borrower is not in conflict with, or in default or violation of, (i) any laws applicable to the Borrower or by which any property or asset of the Borrower is bound or affected, (ii) any Borrower Authorization or (iii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Borrower is a party or by which the Borrower or any property or asset of the Borrower is bound or affected, except for any such conflict, default or violation that would not, individually or in the aggregate have a Material Adverse Effect on the Borrower.

(b) Except as would not have a Material Adverse Effect on the Borrower, since January 31, 2009, there have been no written notices, citations or decisions by any governmental or regulatory body that any product produced, manufactured, marketed or distributed at any time by the Borrower or by any agent on behalf of the Borrower (the "**Products**") is defective or fails to meet any applicable standards promulgated by any such governmental or regulatory body. To the knowledge of the Borrower, the Borrower has complied in all material respects with the laws, regulations, policies, procedures and specifications with respect to the design, manufacture, labeling, testing and inspection of the Products. Except as disclosed in Section 12.11(b) of the Borrower Disclosure Schedule, since January 31, 2009, there have been no recalls, field notifications or seizures ordered or, to the Borrower's knowledge, threatened by any such governmental or regulatory body with respect to any of the Products.

(c) The Borrower has obtained, in all countries where either the Borrower or any agent of the Borrower is marketing or has marketed the Borrower's Products, all applicable licenses, registrations, approvals, clearances and authorizations required by local, state or federal agencies in such countries regulating the safety, effectiveness and market clearance of the Products currently or previously marketed by the Borrower or its agents in such countries, except for any such failures as would not, individually or in the aggregate, have a Material Adverse Effect on the Borrower. The Borrower has identified and made available for examination by Lender all information relating to regulation of its Products, including licenses, registrations, approvals, permits, device listing, inspections, the Borrower's recalls and product actions, audits and the Borrower's ongoing field tests. The Borrower has identified in writing to Lender all international locations where regulatory information and documents are kept.

12.12 **Title to Property**.

(a) The Borrower has good and marketable title to all of its properties, interests in properties and assets, real and personal, reflected in the Borrower Balance Sheet or acquired after the Borrower Balance Sheet Date (except properties, interests in properties and assets sold or otherwise disposed of since the Borrower Balance Sheet Date in the ordinary course of business), or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (i) the lien of current taxes not yet due and payable, (ii) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) liens securing debt which is reflected on the Borrower Balance Sheet. The plants, property and equipment of the Borrower that are used in the operations of its business are in good operating condition and repair. All properties used in the operations of the Borrower are reflected in the Borrower Balance Sheet to the extent GAAP requires the same to be reflected. Section 12.12(a) of the Borrower Disclosure Schedule sets forth a true, correct and complete list of all real property owned or leased by the Borrower, the name of the lessor, the date of the lease and each amendment thereto and the aggregate annual rental and other fees payable under such lease. Such leases are in good standing, are valid and effective in accordance with their respective terms, and there is not under any such leases any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default).

(b) Section 12.12(b) of the Borrower Disclosure Schedule also sets forth a true, correct and complete list of all equipment (the "**Equipment**") owned or leased by the Borrower, and such Equipment is, taken as a whole, (i) adequate for the conduct of the Borrower's business, consistent with its past practice and (ii) in good operating condition (except for ordinary wear and tear).

12.13 **Intellectual Property**.

(a) The Borrower owns, or is licensed or otherwise possesses legally enforceable rights to use all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, copyrights, and any applications for any of the foregoing, net lists, schematics, industrial models, inventions, technology, know-how, trade secrets, inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material ("**Intellectual Property**") that are used or proposed to be used in the business of the Borrower as currently conducted or as proposed to be conducted by the Borrower, except to the extent that the failure to have such rights has not had and could not reasonably be expected to have a Material Adverse Effect on the Borrower.

(b) Section 12.13(b) of the Borrower Disclosure Schedule lists (i) all patents and patent applications and all registered and unregistered trademarks, trade names and service marks, registered and unregistered copyrights, and mask work rights, included in the Intellectual Property, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in which any application for such issuance and registration has been filed, (ii) all licenses, sublicenses and other agreements to which the Borrower is a party and pursuant to which any person is authorized to use any Intellectual Property, and (iii) all licenses, sublicenses and other agreements as to which the Borrower is a party and pursuant to which the Borrower is authorized to use any third party patents, trademarks or copyrights, including software ("**Third Party Intellectual Property Rights**") which are incorporated in, are, or form a part of any products of the Borrower that are, individually or in the aggregate, material to the business of the Borrower. The Borrower is not in violation of any license, sublicense or agreement described in Section 12.13(b) of the Borrower Disclosure Schedule. The execution and delivery of this Agreement by the Borrower and the consummation of the transactions contemplated hereby, will neither cause the Borrower to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth in Section 12.13(b) of the Borrower Disclosure Schedule, the Borrower is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any liens), the Intellectual Property, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which Intellectual Property is being used.

(c) To the Borrower's knowledge, there is no material unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property rights of the Borrower, any trade secret material to the Borrower or any Intellectual Property right of any third party to the extent licensed by or through the Borrower, by any third party, including any employee or former employee of the Borrower. The Borrower has not entered into any agreement to indemnify any other person against any charge of infringement of any Intellectual Property, other than indemnification provisions contained in purchase orders arising in the ordinary course of business.

(d) The Borrower is not or will not be as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any license, sublicense or other agreement relating to the Intellectual Property or Third Party Intellectual Property Rights, the breach of which would have a Material Adverse Effect on the Borrower.

(e) To the Borrower's knowledge, all patents, registered trademarks, service marks and copyrights held by the Borrower are valid and existing and there is no assertion or claim (or basis therefor) challenging the validity of any Intellectual Property of the Borrower. The Borrower has not been sued in any suit, action or proceeding which involves a claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary right of any third party. Neither the conduct of the business of the Borrower as currently conducted or contemplated nor the manufacture, sale, licensing or use of any of the products of the Borrower as now manufactured, sold or licensed or used, nor the use in any way of the Intellectual Property in the manufacture, use, sale or licensing by the Borrower of any products currently proposed, infringes on or will infringe or conflict with, in any way, any license, trademark, trademark right, trade name, trade name right, patent, patent right, industrial model, invention, service mark or copyright of any third party that, individually or in the aggregate, is reasonably likely to have a Material Adverse Effect on the Borrower. All registered trademarks, service marks and copyrights held by the Borrower are valid and subsisting. To the Borrower's knowledge, no third party is challenging the ownership by the Borrower, or validity or effectiveness of, any of the Intellectual Property. The Borrower has not brought any action, suit or proceeding for infringement of Intellectual Property or breach of any license or agreement involving Intellectual Property against any third party. There are no pending, or to the best of the Borrower's knowledge, threatened interference, re-examinations, oppositions or nullities involving any patents, patent rights or applications therefor of the Borrower, except such as may have been commenced by the Borrower. There is no breach or violation of or threatened or actual loss of rights under any licenses to which the Borrower is a party.

(f) The Borrower has secured valid written assignments from all consultants and employees who contributed to the creation or development of Intellectual Property of the rights to such contributions that the Borrower does not already own by operation of law.

(g) The Borrower has taken all necessary and appropriate steps to protect and preserve the confidentiality of all Intellectual Property not otherwise protected by patents, patent applications or copyright ("**Confidential Information**"). The Borrower has a policy requiring each of its employees and contractors to execute proprietary information and confidentiality agreements substantially in the Borrower's standard forms and all current and former employees and contractors of the Borrower have executed such an agreement. All use, disclosure or appropriation of Confidential Information owned by the Borrower by or to a third party has been pursuant to the terms of a written agreement between the Borrower and such third party. All use, disclosure or appropriation of Confidential Information not owned by the Borrower has been pursuant to the terms of a written agreement between the Borrower and the owner of such Confidential Information, or is otherwise lawful.

12.14 **Environmental Matters**.

(a) The following terms shall be defined as follows:

(i) **"Environmental and Safety Laws"** shall mean any federal, state or local laws, ordinances, codes, regulations, rules, policies and orders, as each may be amended from time to time, that are intended to assure the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants; which regulate the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Materials (as defined below) or materials containing Hazardous Materials; or which are intended to assure the protection, safety and good health of employees, workers or other persons, including the public.

(ii) **"Hazardous Materials"** shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive substance or material, including without limitation, those substances, materials and wastes defined in or regulated under any Environmental and Safety Laws; petroleum or petroleum products including crude oil or any fractions thereof; natural gas, synthetic gas, or any mixtures thereof; radon; asbestos; or any other pollutant or contaminant.

(iii) **"Property"** shall mean all real property leased or owned by the Borrower either currently or in the past.

(iv) **"Facilities"** shall mean all buildings and improvements on the Property of the Borrower.

(b) The Borrower represents and warrants as follows: (i) no methylene chloride or asbestos is contained in or has been used at or released from the Facilities; (ii) all Hazardous Materials and wastes have been disposed of in accordance with all Environmental and Safety Laws; and (iii) the Borrower has received no notice (verbal or written) of any non-compliance of the Facilities or of its past or present operations with Environmental and Safety Laws; (iv) no notices, administrative actions or suits are pending or threatened relating to Hazardous Materials or a violation of any Environmental and Safety Laws; (v) the Borrower is not a potentially responsible party under the federal Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), or state analog statute, arising out of events occurring prior to the date hereof; (vi) there has not been in the past, and there is not now, any contamination, disposal, spilling, dumping, incineration, discharge, storage, treatment or handling of Hazardous Materials on, under or migrating to or from the Facilities or Property (including without limitation, soils and surface and ground waters); (vii) there have not been in the past, and are not now, any underground tanks or underground improvements at, on or under the Property including without limitation, treatment or storage tanks, sumps, or water, gas or oil wells; (viii) there are no polychlorinated biphenyls ("**PCBs**") deposited, stored, disposed of or located on the Property or Facilities or any equipment on the Property containing PCBs at levels in excess of 50 parts per million; (ix) there is no formaldehyde on the Property or in the Facilities, nor any insulating material containing urea formaldehyde in the Facilities; (x) the Facilities and the Borrower's uses and activities therein have at all times complied with all Environmental and Safety Laws; (xi) the Borrower has all the permits and licenses required to be issued and is in full compliance with the terms and conditions of those permits; and (xii) the Borrower is not liable for any off-site contamination under any Environmental and Safety Laws.

12.15 **Taxes**.

(a) For purposes of this Section 12.15 and other provisions of this Agreement relating to Taxes, the following definitions shall apply:

(i) The term "**Taxes**" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, (A) imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including but not limited to, federal, state and foreign income taxes), payroll and employee withholding taxes, unemployment insurance contributions, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, withholding taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, and other Tax of any kind whatsoever, which are required to be paid, withheld or collected, in an aggregate amount in excess of $10,000, (B) any liability for the payment of amounts referred to in (A) as a result of being a member of any affiliated, consolidated, combined or unitary group, or (C) any liability for amounts referred to in (A) or (B) as a result of any obligations to indemnify another person.

(ii) The term "**Returns**" shall mean all reports, estimates, declarations of estimated tax, information statements and returns required to be filed in connection with any Taxes, including information returns with respect to backup withholding and other payments to third parties.

(b) Except as set forth on Schedule 12.15, all Returns required to be filed by or on behalf of the Borrower have been duly filed on a timely basis and such Returns are true, complete and correct. All Taxes shown to be payable on such Returns or on subsequent assessments with respect thereto, and all payments of estimated Taxes required to be made by or on behalf of the Borrower under Section 6655 of the Code or comparable provisions of state, local or foreign law, have been paid in full on a timely basis, and no other Taxes are payable by the Borrower with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns). The Borrower has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of the Borrower with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that the Borrower is contesting in good faith through appropriate proceedings. The Borrower has not at any time been a member of an affiliated group of corporations filing consolidated, combined or unitary income or franchise tax returns for a period for which the statute of limitations for any Tax potentially applicable as a result of such membership has not expired other than an affiliated group the common parent of which is the Guarantor.

(c) The amount of the Borrower's liabilities for unpaid Taxes for all periods through the date of the Financial Statements does not, in the aggregate, exceed the amount of the current liability accruals for Taxes reflected on the Financial Statements, and the Financial Statements properly accrue in accordance with GAAP all liabilities for Taxes of the Borrower payable after the date of the Financial Statements attributable to transactions and events occurring prior to such date. No liability for Taxes of the Borrower has been incurred or material amount of taxable income has been realized (or prior to and including the date hereof will be incurred or realized) since such date other than in the ordinary course of business.

(d) Lender has been furnished by the Borrower with true and complete copies of (i) all relevant portions of income tax audit reports, statements of deficiencies, closing or other agreements received by or on behalf of the Borrower relating to Taxes, and (ii) all federal, state and foreign income or franchise tax returns and state sales and use tax Returns for or including the Borrower for all periods since six (6) full years preceding the date of this Agreement.

(e) No audit of the Returns of or including the Borrower by a government or taxing authority is in process, threatened or, to the Borrower's knowledge, pending (either in writing or orally, formally or informally). No deficiencies exist or have been asserted (either in writing or orally, formally or informally) or are expected to be asserted with respect to Taxes of the Borrower, and the Borrower has not received notice (either in writing or orally, formally or informally) nor does it expect to receive notice that it has not filed a Return or paid Taxes required to be filed or paid. The Borrower is not a party to any action or proceeding for assessment or collection of Taxes, nor to the Borrower's knowledge, has such event been asserted or threatened (either in writing or orally, formally or informally) against the Borrower, or any of its assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of the Borrower. The Borrower has disclosed on its federal and state income and franchise tax returns all positions taken therein that could give rise to a substantial understatement penalty within the meaning of Code Section 6662 or comparable provisions of applicable state tax laws.

(f) The Borrower is not (nor has it ever been) a party to any tax sharing agreement. Since April 16, 1997, the Borrower has not been a distributing corporation or a controlled corporation in a transaction described in Section 355(a) of the Code.

(g) The Borrower is not, nor has it been, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The Borrower is not a "consenting corporation" under Section 341(f) of the Code. The Borrower has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a non-deductible expense to the Borrower pursuant to Section 280G or 162(m) of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. The Borrower has not agreed to, nor is it required to make, any adjustment under Code Section 481(a) by reason of, a change in accounting method, and the Borrower will not otherwise have any income reportable for a period ending after the date hereof attributable to a transaction or other event (e.g., an installment sale) occurring prior to the date hereof with respect to which the Borrower received the prior economic benefit. The Borrower is not, nor has it been, a "reporting corporation" subject to the information reporting and record maintenance requirements of Section 6038A and the regulations thereunder.

(h) The Borrower Disclosure Schedule contains accurate and complete information regarding the Borrower's net operating losses for federal and each state tax purposes. The Borrower has no net operating losses or credit carryovers or other tax attributes currently subject to limitation under Sections 382, 383, or 384 of the Code.

(i) The Borrower shall not have any liability for Taxes of any person other than the Borrower under (a) Treas. Reg. Section 1502-6 (or any similar provision of state, local, or foreign law), (b) as a transferee or successor, (c) by contract, or (d) otherwise.

(j) With respect to each option and share of restricted stock, the Borrower and the Stockholders warrant and represent that each such option has been granted with an exercise price no lower than "fair market value" (determined in accordance with Treas. Reg. Section 1.409A-1(b)(vi)) as of the grant date and that each such grant does not provide for a deferral of compensation under Code section 409A. Each Borrower Employee Plan (as defined in Section 12.16 hereof) that is a "nonqualified deferred compensation plan" (as defined in Code Section 409A(d)(1)) has been operated since January 1, 2005, in good faith compliance with Code Section 409A and the rules and regulations issued thereunder. No Borrower Employee Plan that is a "nonqualified deferred compensation plan" has been materially modified (as determined under Treas. Reg. Section 1.409A-6) after October 3, 2004. The Borrower is not a party to, and is not otherwise obligated under, any contract, plan or arrangement that provides for the gross-up of the Tax imposed by Section 409A(a)(1)(B) of the Code.

12.16 **Employee Benefit Plans**.

(a) Section 12.16(a) of the Borrower Disclosure Schedule lists, with respect to the Borrower and any trade or business (whether or not incorporated) which is treated as a single employer with the Borrower (an "**ERISA Affiliate**") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")), (ii) each loan to a non-officer employee in excess of $10,000, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section 129), life insurance or accident insurance plans, programs or arrangements, (iii) all contracts and agreements relating to employment that provide for annual compensation in excess of $100,000 and all severance agreements, with any of the directors, officers or employees of the Borrower (other than, in each case, any such contract or agreement that is terminable by the Borrower at will or without penalty or other adverse consequence), (iv) all bonus, pension, profit sharing, savings, deferred compensation or incentive plans, programs or arrangements, (v) other fringe or employee benefit plans, programs or arrangements that apply to senior management of the Borrower and that do not generally apply to all employees, and (vi) any current or former employment or executive compensation or severance agreements, written or otherwise, as to which unsatisfied obligations of the Borrower of greater than $50,000 remain for the benefit of, or relating to, any present or former employee, consultant or director of the Borrower (together, the "**Borrower Employee Plans**").

(b) The Borrower has furnished to Lender a copy of each of the Borrower Employee Plans and related plan documents (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents, and, to the extent still in its possession, any material employee communications relating thereto) and has, with respect to each Borrower Employee Plan which is subject to ERISA reporting requirements, provided copies of the Form 5500 reports filed for the last three plan years. Any Borrower Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service an opinion letter or favorable determination letter as to its initial qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation; may rely on an opinion letter issued to a prototype plan sponsor with respect to a standardized plan adopted by the Borrower in accordance with the requirements for such reliance; or has applied to the Internal Revenue Service for such a determination letter (or has time remaining to apply for such a determination letter) prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination with respect to all periods since the date of adoption of such Borrower Employee Plan. The Borrower has also furnished Lender with the most recent Internal Revenue Service determination letter issued with respect to each such the Borrower Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any the Borrower Employee Plan subject to Code Section 401(a).

(c) Except as set forth in Section 12.16 of the Borrower Disclosure Schedule, (i) none of Borrower Employee Plans promises or provides retiree medical or other retiree welfare or life insurance benefits to any person; (ii) there has been no "**prohibited transaction**," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, and not exempt under Section 408 of ERISA or Section 4975 of the Code, with respect to any Borrower Employee Plan, which could reasonably be expected to have, in the aggregate, a Material Adverse Effect; (iii) each Borrower Employee Plan has been administered in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), except as would not have, in the aggregate, a Material Adverse Effect, and the Borrower or ERISA Affiliate have performed all obligations required to be performed by them under, are not in any material respect in default, under or violation of, and have no knowledge of any material default or violation by any other party to, any of the Borrower Employee Plans; (iv) neither the Borrower nor any ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980D of the Code or Title I of ERISA with respect to any of the Borrower Employee Plans; (v) all material contributions required to be made by the Borrower or any ERISA Affiliate to any Borrower Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Borrower Employee Plan for the current plan years; (vi) with respect to each Borrower Employee Plan, no "**reportable event**" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 or ERISA has occurred; (vii) no Borrower Employee Plan is covered by, and neither the Borrower nor any ERISA Affiliate has incurred or expects to incur any direct or indirect liability under, arising out of or by operation of Title IV of ERISA in connection with the termination of, or an employee's withdrawal from, any Borrower Employee Plan or other retirement plan or arrangement, and no fact or event exists that could give rise to any such liability, or under Section 412 of the Code; and (viii) no compensation paid or payable to any employee of the Borrower has been, or will be, non-deductible by reason of application of Section 162(m) or 280G of the Code. With respect to each Borrower Employee Plan subject to ERISA as either an employee pension plan within the meaning of Section 3(2) of ERISA or an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, the Borrower has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such the Borrower Employee Plan. No suit, administrative proceeding, action or other litigation has been brought, or to the best knowledge of the Borrower is threatened, against or with respect to any such the Borrower Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor. Neither the Borrower nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any "**multiemployer plan**" as defined in Section 3(37) of ERISA.

(d) With respect to each Borrower Employee Plan, the Borrower has complied with (i) the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**") and the regulations thereunder or any similar applicable state law, (ii) the applicable requirements of the Health Insurance Portability Amendments Act ("**HIPAA**") and the regulations thereunder and (iii) the applicable requirements of the Family Medical Leave Act of 1993 and the regulations thereunder or any similar applicable state law, except to the extent that failure to comply would not, in the aggregate, have a Material Adverse Effect.

(e) Except as set forth on Schedule 12.16(e), the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee or other service provider of the Borrower or any ERISA Affiliate to severance benefits or any other payment (including, without limitation, unemployment compensation, golden parachute or bonus), except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting of any such benefits, or increase the amount of compensation due any such employee or service provider.

(f) There has been no amendment to, written interpretation or announcement (whether or not written) by the Borrower or any ERISA Affiliate relating to, or change in participation or coverage under, any the Borrower Employee Plan which would materially increase the expense of maintaining such Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in the Borrower's financial statements.

12.17 **Effect on Other Certain Agreements** . Except as set forth on Schedule 12.17, neither the execution and delivery of this Agreement or the Transaction Agreements nor the consummation of the transactions contemplated hereby or thereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director or employee of the Borrower, (ii) materially increase any benefits otherwise payable by the Borrower or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

12.18 **Employee Matters**.

(a) Except as set forth in Schedule 12.18, the Borrower is in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and is not engaged in any unfair labor practice. There are no pending claims against the Borrower under any workers compensation plan or policy or for long term disability. The Borrower does not have any material obligations under COBRA or any similar state law with respect to any former employees or qualifying beneficiaries thereunder. There are no controversies pending or, to the Borrower's knowledge, threatened, between the Borrower and any of its employees or former employees, which controversies have or could reasonably be expected to have a Material Adverse Effect on the Borrower. The Borrower is not a party to any collective bargaining agreement or other labor unions contract nor does the Borrower know of any activities or proceedings of any labor union or organize any such employees. The Borrower has not incurred any liability under, and has complied in all respects with, the Worker Adjustment Retraining Notification Act (the "**WARN Act**"), and no fact or event exists that could give rise to liability under the WARN Act. Section 12.18 of the Borrower Disclosure Schedule contains a list of all employees who are currently on a leave of absence (whether paid or unpaid), the reasons therefor, the expected return date, and whether reemployment of such employee is guaranteed by contract or statute, and a list of all employees who have requested a leave of absence to commence at any time after the date of this Agreement, the reason therefor, the expected length of such leave, and whether reemployment of such employee is guaranteed by contract or statute.

(b) The Company is in compliance with all federal, state and local laws governing the employment and sponsorship of foreign nationals employed by the Company and is not required to make any filing with or give any notice to, or to obtain any consent from, any governmental body in connection with employment by the Company of any employee who is a foreign national. There is no pending legal proceeding, and no governmental agency has threatened to commence any legal proceeding, against the Company or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with the employment by the Company of any employee who is a foreign national. There is no order, writ, injunction or decree which has been entered against the Company preventing or delaying the employment by the Company of any employee who is a foreign national.

12.19 **Material Contracts**.

(a) Section 12.19(a) of the Borrower Disclosure Schedule contains a list of all contracts and agreements to which the Borrower is a party and that are material to the business, results of operations, or condition (financial or otherwise), of the Borrower (such contracts, agreements and arrangements as are required to be set forth in Section 12.19(a) of the Borrower Disclosure Schedule being referred to herein collectively as the "**Material Contracts**"). Material Contracts shall include, without limitation, the following and shall be categorized in the Borrower Disclosure Schedule as follows:

(i) each contract and agreement (other than routine purchase orders and pricing quotes in the ordinary course of business covering a period of less than one year) for the purchase of inventory, spare parts, other materials or personal property with any supplier or for the furnishing of services to the Borrower under the terms of which the Borrower: (A) paid or otherwise gave consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Borrower without penalty or further payment of less than $5,000.00;

(ii) each customer contract and agreement (other than routine purchase orders, pricing quotes with open acceptance and other tender bids, in each case, entered into in the ordinary course of business and covering a period of less than one year) to which the Borrower is a party which (A) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Borrower without penalty or further payment of less than $5,000.00;

(iii) (A) all distributor, manufacturer's representative, broker, franchise, agency and dealer contracts and agreements to which the Borrower is a party (specifying on a matrix, in the case of distributor agreements, the name of the distributor, product, territory, termination date and exclusivity provisions) and (B) all sales promotion, market research, marketing and advertising contracts and agreements to which the Borrower is a party which: (1) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008 or (2) are likely to involve consideration of more than $5,000.00 in the aggregate over the remaining term of the contract;

(iv) all management contracts with independent contractors or consultants (or similar arrangements) to which the Borrower is a party and which (A) involved consideration or more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract, or (C) cannot be canceled by the Borrower without penalty or further payment of less than $5,000.00;

(v) all contracts and agreements (excluding routine checking account overdraft agreements involving petty cash amounts) under which the Borrower has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness or under which the Borrower has imposed (or may impose) a security interest or lien on any of their respective assets, whether tangible or intangible, to secure indebtedness;

(vi) all contracts and agreements that limit the ability of the Borrower to compete in any line of business or with any person or in any geographic area or during any period of time, or to solicit any customer or client;

(vii) all contracts and agreements between or among the Borrower, on the one hand, and any affiliate of the Borrower, on the other hand;

(viii) all contracts and agreements to which the Borrower is a party under which it has agreed to supply products to a customer at specified prices, whether directly or through a specific distributor, manufacturer's representative or dealer; and

(ix) all other contracts or agreements (A) which are material to the Borrower or the conduct of their respective businesses or (B) the absence of which would have a Material Adverse Effect on the Borrower or (C) which are believed by the Borrower to be of unique value even though not material to the business of the Borrower.

(b) Except as would not, individually or in the aggregate, have a Material Adverse Effect on the Borrower, each Borrower license and each Material Contract, is a legal, valid and binding agreement, and none of the Borrower licenses or Material Contracts is in default by its terms or has been canceled by the other party; the Borrower is not in receipt of any claim of default under any such agreement; and the Borrower does not anticipate any termination of or change to, or receipt of a proposal with respect to, any such agreement as a result of the transactions contemplated by this Agreement. The Borrower has furnished Lender with true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

12.20 **Interested Party Transactions**. Except as set forth in Schedule 12.20, the Borrower is not directly or indirectly indebted to any director, officer, employee or agent of the Borrower (each of the foregoing, an "**Interested Party**") (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), nor is the Borrower directly or indirectly indebted to any members of the immediate families of any Interested Party, and no such Interested Parties or members of their immediate families are directly or indirectly indebted to the Borrower. No Interested Parties have any direct or indirect ownership or financial interest in any firm or corporation with which the Borrower is affiliated or with which the Borrower has a business relationship, or any firm or corporation which competes with the Borrower except that Interested Parties and members of their families may own stock in (but not exceeding two percent (2%) of the outstanding capital stock of) any publicly traded companies that may compete with the Borrower. No Interested Party or any members of their immediate families are, directly or indirectly, interested in any material contract with the Borrower. The Borrower is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

12.21 **Insurance**. The Borrower has policies of insurance and bonds of the type and in the amounts customarily carried by persons conducting businesses or owning assets similar to those of the Borrower. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and the Borrower is otherwise in compliance with the terms of such policies and bonds. The Borrower has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

12.22 **Compliance With Laws**. The Borrower has complied with, is not in violation of, and has not received any notices of violation with respect to, any federal, state, local or foreign statute, law or regulation with respect to the conduct of its business, or the ownership or operation of its business, except for such violations or failures to comply as could not reasonably be expected to have a Material Adverse Effect on the Borrower.

12.23 **Minute Books**. The minute books of the Borrower made available to Lender contain a complete summary of all meetings of directors and stockholders or actions by written consent since the time of incorporation of the Borrower through the date of this Agreement, and reflect all transactions referred to in such minutes accurately in all material respects.

12.24 **Complete Copies of Materials**. The Borrower has delivered or made available true and complete copies of each document which has been requested by Lender or its counsel in connection with their legal and accounting review of the Borrower.

12.25 **Brokers' and Finders' Fees**. The Borrower has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transaction contemplated hereby.

12.26 **Board and Stockholder Approval**. The Board of Directors of the Borrower has unanimously approved this Agreement and the Transaction Agreements and the transactions contemplated hereunder and thereunder. Guarantor has obtained Proxies from the Majority Stockholders.

12.27 **Inventory**. The inventories shown on the Financial Statements or thereafter acquired by the Borrower consist of items of a quantity and quality usable or salable in the ordinary course of business. Since January 31, 2009, the Borrower has continued to replenish inventories in a normal and customary manner consistent with past practice. The Borrower has not received written or oral notice that it will experience in the foreseeable future any difficulty in obtaining, in the desired quantity and quality and at a reasonable price and upon reasonable terms and conditions, the raw materials, supplies or component products required for the manufacture, assembly or production of its products. The values at which inventories are carried reflect the inventory valuation policy of the Borrower, which is consistent with its past practice and in accordance with GAAP applied on a consistent basis. Due provision has been made on the books of the Borrower in the ordinary course of business consistent with past practices to provide for all slow-moving, obsolete, or unusable inventories at their estimated useful scrap values and such inventory reserves are adequate to provide for such slow-moving, obsolete or unusable inventory and inventory shrinkage.

12.28 **Accounts Receivable**.

(a) The Borrower has made available to Lender a list of all accounts receivable of the Borrower reflected on the Financial Statements ("**Accounts Receivable**") along with a range of days elapsed since invoice.

(b) All Accounts Receivable of the Borrower arose in the ordinary course of business and are carried at values determined in accordance with GAAP consistently applied. No person has any lien on any of such Accounts Receivable and no request or agreement for deduction or discount has been made with respect to any of such Accounts Receivable.

(c) All of the inventories of the Borrower reflected in the Financial Statements and the Borrower's books and records on the date hereof were purchased, acquired or produced in the ordinary and regular course of business and in a manner consistent with the Borrower's regular inventory practices and are set forth on the Borrower's books and records in accordance with the practices and principles of the Borrower consistent with the method of treating said items in prior periods. None of the inventory of the Borrower reflected on the Financial Statements or on the Borrower's books and records as of the date hereof (in either case net of the reserve therefor) is obsolete, defective or in excess of the needs of the business of the Borrower reasonably anticipated for the normal operation of the business consistent with past practice and outstanding customer contracts. The presentation of inventory on the Financial Statements conforms to GAAP and such inventory is stated at the lower of cost or net realizable value.

12.29 **Customers and Suppliers**. As of the date hereof, no customer which individually accounted for more than ten percent (10%) of the Borrower's gross revenues during the twelve (12) month period preceding the date hereof, and no supplier of the Borrower, has canceled or otherwise terminated, or made any written threat to the Borrower to cancel or otherwise terminate its relationship with the Borrower, or has at any time on or after December 31, 2008 decreased materially its services or supplies to the Borrower in the case of any such supplier, or its usage of the services or products of the Borrower in the case of such customer, and to the Borrower's knowledge, no such supplier or customer intends to cancel or otherwise terminate its relationship with the Borrower or to decrease materially its services or supplies to the Borrower or its usage of the services or products of the Borrower, as the case may be. From and after the date hereof, no customer which individually accounted for more than ten percent (10%) of the Borrower's gross revenues during the twelve (12) month period preceding the date hereof, has canceled or otherwise terminated, or made any written threat to the Borrower to cancel or otherwise terminate, for any reason, including without limitation the consummation of the transactions by this Agreement, its relationship with the Borrower, and to the Borrower's knowledge, no such customer intends to cancel or otherwise terminate its relationship with the Borrower or to decrease materially its usage of the services or products of the Borrower. The Borrower has not knowingly breached, so as to provide a benefit to the Borrower that was not intended by the parties, any agreement with, or engaged in any fraudulent conduct with respect to, any customer or supplier of the Borrower.

12.30 **Third Party Consents**. The Borrower has obtained all consents or approvals needed from any third party in order to effect this Agreement or any of the transactions contemplated hereby.

12.31 **No Commitments Regarding Future Products.** The Borrower has made no sales to customers that are contingent upon providing future enhancements of existing products, to add features not presently available on existing products or to otherwise enhance the performance of its existing products (other than beta or similar arrangements pursuant to which the Borrower's customers from time to time test or evaluate products). The products the Borrower has delivered to customers substantially comply with published specifications for such products and the Borrower has not received material complaints from customers about its products that remain unresolved. Section 12.31 of the Borrower Disclosure Schedule accurately sets forth a complete list of products in development (exclusive of mere enhancements to and additional features for existing products).

12.32 **Representations Complete**. None of the representations or warranties made by the Borrower in this Agreement or in any attachment hereto, including the Borrower Disclosure Schedule, or certificate furnished by the Borrower pursuant to this Agreement, when all such documents are read together in their entirety, contains any untrue statement of a material fact, or omits to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

12.33 Each of the representations and warranties set out in this Section 12 are made by the Borrower to the Lender on (i) the date of this Agreement, (ii) the date of each Drawdown Notice and (iii) each Drawdown Date.

## 13. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

13.1 **Organization, Good Standing and Qualification.** The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

13.2 **Authorization.** All corporate action on the part of the Guarantor, its officers, directors and stockholders necessary for the authorization, execution and delivery of the Transaction Agreements and the performance of all obligations of the Guarantor hereunder and thereunder has been taken or will be taken prior to the date hereof. The Transaction Agreements, when executed and delivered by the Guarantor, shall constitute valid and legally binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**14. REPRESENTATIONS AND WARRANTIES OF THE LENDER**

14.1 **Organization, Good Standing and Qualification.** The Lender is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

14.2 **Authorization.** All corporate action on the part of the Lender, its officers, directors and stockholders necessary for the authorization, execution and delivery of the Transaction Agreements and the performance of all obligations of the Lender hereunder and thereunder has been taken or will be taken prior to the date hereof. The Transaction Agreements, when executed and delivered by the Lender, shall constitute valid and legally binding obligations of the Lender, enforceable against the Lender in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**15. CONDITIONS OF THE LENDER'S OBLIGATIONS HEREUNDER**

The obligations of the Lender to the Borrower under this agreement this Agreement are subject to the fulfillment of each of the following conditions, unless otherwise waived:

15.1 **Execution and Delivery of Transaction Agreements**. The Borrower and/or the Guarantor (if applicable) shall have executed and delivered the Transaction Agreements to the Lender.

15.2 **Representations and Warranties.** The representations and warranties of the Borrower contained in Section 12 and the representations of the Guarantor contained in Section 13 shall be true on and as of (i) the Effective Date, (ii) the date specified in any Drawdown Notice, and (iii) the Drawdown Date.

15.3 **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of (i) the Effective Date, (ii) the date specified in any Drawdown Notice, and (iii) the Drawdown Date.

## 16. CONDITIONS OF BORROWERS OBLIGATIONS HEREUNDER

The obligations of the Borrower to the Lender under this agreement this Agreement are subject to the fulfillment of each of the following conditions, unless otherwise waived:

16.1 **Representations and Warranties.** The representations and warranties of the Borrower contained in Section 14 shall be true on and as of the Effective Date.

16.2 **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Effective Date.

16.3 **Delivery of Form W-8 BEN or Form W-9**. The Lender shall have completed and delivered to the Borrower a validly executed IRS Form W-8 BEN or IRS Form W-9, as applicable.

## 17. NOTICES

Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

## 18. COUNTERPARTS

This Agreement may be executed in counterpart by the Parties on separate counterparts each of which when executed and delivered shall constitute an original both such counterparts together constituting but one and the same instrument.

**19. CAPTIONS**

The captions to the Sections in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

**20. ASSIGNMENT**

The Borrower shall not be entitled to assign its rights or transfer its obligations hereunder.

**21. AMENDMENT AND WAIVER**

Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Parties, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**22. GOVERNING LAW**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

**23. SEVERABILITY**

Wherever possible, each provision of this Agreement a shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**24. ENTIRE AGREEMENT**

This Agreement and the Loan Notes constitute the complete agreement between the Parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 21.

[**SIGNATURE PAGE FOLLOWS]**

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

**BORROWER:**

UCA Services, Inc., d/b/a NetFabric Technologies, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**GUARANTOR:**

NetFabric Holdings, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**LENDER:**

Fortify Infrastructure Services, Inc.

By: /s/
Rajkumar Velagapudi, President

Address: 2340 Walsh Avenue,
Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

EXHIBIT 1

**Drawdown Notice**

To: **Fortify Infrastructure Services, Inc. (the "Lender")**

Copy: **NetFabric Holdings, Inc. (the "Guarantor")**

From: **UCA Services, Inc. (the "Borrower")**

Date: [ ]

This notice is being delivered pursuant to Section 1.3 of the Credit Agreement dated February __, 2009 between the Lender, the Borrower and Guarantor (the "**Credit Agreement**").

Terms not defined herein shall have the same meaning as set out in the Credit Agreement.

The Borrower hereby gives the Lender notice that, pursuant to the Credit Agreement and upon the terms and subject to the conditions contained therein, the Borrower desires to draw down the following amount:

(a) Drawdown Amount: [$ ]
(b) Drawdown Date: [ ]

The undersigned hereby certifies to the Lender that the representations and warranties made by the Borrower to the Lender in Section 13 of the Credit Agreement are true, complete and accurate in all respects as of the date hereof and shall be true, complete and accurate in all respects as of the Drawdown Date.

The Borrower has caused this Drawdown Notice to be executed and delivered by an officer duly authorized as of the date first above written.

UCA Services, Inc.

By _____
Name: Fahad Syed
Title: CEO

EXHIBIT 2

[FORM OF PROMISSORY NOTE]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

**SECURED PROMISSORY NOTE**

$[,000,000.00] March __, 2009
Parsippany, NJ

This note is entered into pursuant to that certain credit agreement dated March __, 2009 (the "Note"), by and among, NetFabric Technologies, Inc., d/b/a UCA Services, Inc., a New Jersey corporation (the "Company"), NetFabric Holdings, Inc., a Delaware corporation (the "Guarantor") and Fortify Infrastructure Services, Inc., a Delaware corporation (the "Holder") (the "Credit Agreement.") For value received, the Company promises to pay to Holder, the principal sum of [ ]Dollars [($,000,000.00)]. Interest shall accrue from the date of this Note on the unpaid principal amount at a rate equal to eight percent (8%) per annum, compounded annually. This Note is subject to the following terms and conditions.

1. **Maturity.** This Note will automatically mature and be due and payable on the third (3rd) anniversary of the Effective Date (as defined in the Credit Agreement) (the "Maturity Date"). Interest shall accrue on this Note but shall not be due and payable until the Maturity Date. Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of ninety (90) days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Company.

2. **Payment.**

(a) All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to the accrued interest then due and payable and the remainder applied to principal.

(b) The Company may not prepay this Note.

3. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Notwithstanding the foregoing, neither party may assign, pledge, or otherwise transfer this Note without the prior written consent of the other party, except for transfers to affiliates. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

4. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

5. **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

6. **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Company and the Holder. Any amendment or waiver effected in accordance with this Section 6 shall be binding upon the Company, the Holder and each transferee of the Note.

7. **Officers and Directors Not Liable.** In no event shall any officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

8. **Security Interest and Guarantee.** This Note is secured by (i) all of the assets of the Company and Guarantor in accordance with a separate security agreement (the "Security Agreement") of even date herewith between the Company and the Holder, and (ii) all of equity securities of the Company currently owned or hereafter acquired by the Guarantor in accordance with the provisions of a stock pledge agreement (the "Pledge Agreement") of even date herewith. In case of an Event of Default (as defined in the Security Agreement and the Pledge Agreement), the Holder shall have the rights set forth in the Security Agreement and the Pledge Agreement, respectively.

9. **Action to Collect on Note.** If action is instituted to collect on this Note, the Company promises to pay all costs and expenses, including reasonable attorney's fees, incurred in connection with such action.

10. **Credit Agreement.** This Note shall incorporate all of the terms and conditions contained the Credit Agreement.

**COMPANY:**

UCA Services, Inc., d/b/a NetFabric Technologies, Inc.

By: _____
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**GUARANTOR:**

NetFabric Holdings, Inc.

By: _____
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**AGREED TO AND ACCEPTED:**

Fortify Infrastructure Services, Inc.

By: _____

Name: Rajkumar Velagapudi, President and CEO

Address: 2340 Walsh Avenue, Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

**SECURITY AGREEMENT**

This Security Agreement (the "Agreement") is made as of March 12, 2009 by and among NetFabric Holdings, Inc., a Delaware corporation ("NetFabric") and NetFabric Technologies, Inc. d/b/a UCA Services, Inc., a New Jersey corporation and a wholly-owned subsidiary of NetFabric ("UCA"), in favor of Fortify Infrastructure Services, Inc., a Delaware corporation (the "Secured Party"). NetFabric and UCA are sometimes referred to herein as "Debtor" and collectively as "Debtors."

**RECITALS**

Secured Party has (i) purchased from UCA a Secured Promissory Note of even date herewith (the "Note") pursuant to which the Debtor is borrowing $5,000,000.00 from Secured Party in accordance with the terms and conditions set forth in the Note and the Convertible Note Purchase Agreement of even date herewith (the "Note Purchase Agreement"), and (ii) agreed to extend a credit facility to UCA in an amount not to exceed $1,000,000.00 from which UCA may draw down for working capital purposes pursuant to the terms and conditions set forth in the Credit Agreement of even date herewith (the "Credit Agreement"). NetFabric has guaranteed the obligations of UCA under each of the Note, the Note Purchase Agreement and the Credit Agreement on the terms set forth therein and herein and as set forth in that certain Stock Pledge Agreement of even date herewith (the "Pledge Agreement").

In addition to the foregoing, NetFabric and the Secured Party have entered into an Option Agreement of even date herewith (the "Option Agreement") pursuant to which NetFabric has granted to Secured Party the option to purchase all of the equity securities of UCA currently owned or hereafter acquired by NetFabric on the terms and conditions set forth therein. The Note, the Note Purchase Agreement, the Credit Agreement, the Pledge Agreement, the Option Agreement and this Agreement are referred to herein as the "Transaction Agreements."

The parties intend that UCA's obligations to repay the Note and the amounts drawn under the Credit Agreement, as well as UCA's representation, warranties and obligations under the Transaction Agreements, be secured by all of the assets of the UCA. The parties further agree that Netfabic's obligations under the Transaction Agreements, as well as NetFabric's guarantee of UCA's obligations thereunder, be secured by all of the assets of NetFabric. For the avoidance of doubt, each of NetFabric and UCA shall be jointly and severally liable of their respective obligations under this Agreement and the Transaction Agreements.

**AGREEMENT**

In consideration of the loan to UCA by Secured Party pursuant to the Note and the Credit Agreement and for other good and valuable consideration, each Debtor hereby agrees with the Secured Party as follows:

1. **Grant of Security Interest.** To secure each Debtor's full and timely performance of all of obligations and liabilities to the Secured Party pursuant to the Transaction Agreements (including, without limitation, each Debtor's obligation to timely pay the principal amount of, and interest on, the Note and amounts drawn pursuant to the Credit Agreement) (the "Obligations"), each Debtor hereby grant to the Secured Party a continuing security interest (the "Security Interest") in and to all of the property described on Exhibit A (in the case of UCA) and Exhibit B (in the case of NetFabric) to this Agreement (the "Collateral"). The Security Interest shall be a first and prior interest in all of the Collateral.

2. **Covenants.** Each Debtor covenants and agrees with the Secured Party that, from and after the date of this Agreement until the Obligations are paid or satisfied in full:

(a) **Other Liens.** Except for the Security Interest, such Debtor is the owner of the Collateral and will be the owner of the Collateral hereafter acquired free from any adverse lien, security interest or encumbrance, and such Debtor will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein. No financing statements covering any Collateral or any proceeds thereof are on file in any public office.

(b) **Further Documentation.**

(i) At any time and from time to time, upon the written request of the Secured Party, and at the sole expense of the Debtors, such Debtor will promptly and duly execute and deliver such further instruments and documents and take such further action as the Secured Party may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, filing any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the liens created hereby. Each Debtor also hereby authorizes the Secured Party to file any such financing or continuation statement without the signature of such Debtor to the extent permitted by applicable law. A reproduction of this Agreement shall be sufficient as a financing statement (or as an exhibit to a financing statement on form UCC-1) for filing in any jurisdiction.

(ii) If any Collateral is at any time in the possession or control of any warehouseman, bailee or such other agents or processors, then each Debtor shall notify the Secured Party thereof and, upon request by the Secured Party, shall obtain a bailee letter acknowledged by the bailee that notifies such person of the Secured Party's Security Interest in and to such Collateral and instructs such person to hold all such Collateral for the Secured Party's account subject to the Secured Party's instructions, unless the Secured Party agrees in writing to waive such bailee letter requirement. If at any time any Collateral is located in any operating facility of the Debtors that is leased by such Debtor, then such Debtor shall notify the Secured Party thereof and, upon request by the Secured Party, shall obtain written landlord lien waivers or subordinations, in form and substance reasonably satisfactory to the Secured Party, that waive or subordinate all present and future liens which the owner or lessor of such premises may be entitled to assert against the Collateral.

(iii) From time to time, each Debtor shall, upon the Secured Party's request, execute and deliver confirmatory written instruments pledging the Collateral to the Secured Party, but such Debtor's failure to do so shall not affect or limit any Security Interest or any other rights of the Secured Party in and to the Collateral with respect to such Debtor. So long as there are amounts owing in respect of the Note and the Credit Agreement and until all Obligations have been satisfied in full, the Secured Party's Security Interest in and to the Collateral shall continue in full force and effect in and to all Collateral.

(c) **Indemnification.** Each Debtor agrees to defend, indemnify and hold harmless the Secured Party against any and all liabilities, costs and expenses (including, without limitation, legal fees and expenses): (i) with respect to, or resulting from, any delay in paying, any and all excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral, (ii) with respect to, or resulting from, any delay in complying with any law, rule, regulation or order of any governmental authority applicable to any of the Collateral or (iii) in connection with any of the transactions contemplated by this Agreement.

(d) **Maintenance of Records.** Each Debtor will keep and maintain at its own expense complete and satisfactory records of the Collateral.

(e) **Inspection Rights.** The Secured Party shall have full access during normal business hours, and upon reasonable prior written notice, to all the books, correspondence and other records of each Debtor relating to the Collateral. The Secured Party or its representatives may examine such records and make photocopies or otherwise take extracts from such records. Each Debtor agrees to render to the Secured Party, at such Debtor's expense, such clerical and other assistance as may be reasonably requested with regard to the exercise of its rights pursuant to this paragraph.

(f) **Compliance with Laws, etc.** Each Debtor will comply in all material respects with all laws, rules, regulations and orders of any governmental authority applicable to any part of the Collateral or to the operation of the Debtor's business; provided, however, that such Debtor may contest any such law, rule, regulation or order in any reasonable manner which does not adversely affect the Secured Party's rights or the priority of its liens on the Collateral.

(g) **Payment of Obligations.** Each Debtor will pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Collateral or with respect to any its income or profits derived from the Collateral, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if (i) the validity of such charge is being contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any danger of the sale, forfeiture or loss of any of the Collateral or any interest in the Collateral and (iii) such charge is adequately reserved against on such Debtor's books in accordance with generally accepted accounting principles.

(h) **Limitation on Liens on Collateral.** Each Debtor will not create, incur or permit to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any lien or claim on or to the Collateral, other than the Security Interest, and will defend the right, title and interest of the Secured Party in and to any of the Collateral against the claims and demands of all other persons.

(i) **Limitations on Dispositions of Collateral.** Each Debtor will not sell, transfer, lease or otherwise dispose of any of the Collateral, or attempt, offer or contract to do so.

(j) **Further Identification of Collateral.** Each Debtor will furnish to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party may reasonably request in writing, all in reasonable detail and in form and substance reasonably acceptable to the Secured Party, including, without limitation, copies of any reports, certificates, appraisals or other documents prepared for, or on behalf of, any lender to such Debtor, and with the delivery of each of the foregoing, a certificate of such Debtor executed by an officer thereof certifying as to the accuracy and completeness of the foregoing. If any such records or reports regarding the Collateral are prepared by an accounting firm, each Debtor hereby authorizes such service to deliver such records, reports, and related documents to the Secured Party in accordance with the foregoing provisions.

3. **Secured Party's Appointment as Attorney-in-Fact.**

(a) **Powers.** For purposes of this Agreement, an "Event of Default" shall have occurred if/upon:

(i) UCA (or NetFabric) shall fail to pay as and when due any principal or interest under the Note or the Credit Agreement.

(ii) UCA or NetFabric shall breach or default in connection with any of the representations, warranties, covenants or obligations contained the Transaction Agreements.

(iii) UCA or NetFabric makes an assignment for the benefit of creditors generally, offers a composition or extension to creditors, or makes or sends notice of an intended bulk sale of any business or assets now or hereafter owned or conducted.

(iv) The commencement of any action for the dissolution or liquidation of either UCA or NetFabric, or the commencement of any case or proceeding for reorganization or liquidation of the Company's debts under Title 11 of the United States Code as now or hereafter in effect, or any successor statute, or any other state or federal law, now or hereafter enacted for the relief of debtors, whether instituted by or against either Debtor; provided, however, that the each Debtor shall have sixty (60) days to obtain the dismissal or discharge of any involuntary proceeding filed against it.

(v) The appointment of a receiver, liquidator, custodian, trustee or similar official or fiduciary for the Debtors or for a material portion of any property of the Debtors.

(vi) The loss, theft, damage, destruction or write-down of any material portion of the Collateral

(b) **Powers.** Each Debtor hereby appoints the Secured Party and any officer or agent of the Secured Party, with full power of substitution, as its attorney-in-fact with full irrevocable power and authority in the place of such Debtor and in the name of such Debtor or its own name, from time to time in the Secured Party's discretion so long as an Event of Default has occurred and is continuing, for the purpose of carrying out the terms of this Agreement, to take any appropriate action and to execute any instrument which may be necessary or desirable to accomplish the purposes of this Agreement. Without limiting the foregoing, so long as an Event of Default has occurred and is continuing, the Secured Party shall have the right, without notice to, or the consent of, each Debtor, to do any of the following on such Debtor's behalf:

(i) to pay or discharge any taxes or liens levied or placed on or threatened against the Collateral;

(ii) to direct any party liable for any payment under any of the Collateral to make payment of any and all amounts due or to become due thereunder directly to the Secured Party or as the Secured Party directs;

(iii) to ask for or demand, collect, and receive payment of and receipt for, any payments due or to become due at any time in respect of or arising out of any Collateral;

(iv) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to enforce any right in respect of any Collateral;

(v) to defend any suit, action or proceeding brought against such Debtor with respect to any Collateral;

(vi) to settle, compromise or adjust any suit, action or proceeding described in subsection (v) above and to give such discharges or releases in connection therewith as the Secured Party may deem appropriate;

(vii) to assign any patent right included in the Collateral of each Debtor (along with the goodwill of the business to which any such patent right pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine; and

(viii) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral and to take, at the Secured Party's option and the Debtors' expense, any actions which the Secured Party deems necessary to protect, preserve or realize upon the Collateral and the Secured Party's liens on the Collateral and to carry out the intent of this Agreement, in each case to the same extent as if the Secured Party were the absolute owner of the Collateral for all purposes.

Each Debtor hereby ratifies whatever actions the Secured Party shall lawfully do or cause to be done in accordance with this Section 3. This power of attorney shall be a power coupled with an interest and shall be irrevocable.

(c) **No Duty on Secured Party's Part.** The powers conferred on the Secured Party by this Section 3 are solely to protect the Secured Party's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Secured Party nor any of its officers, directors, employees or agents shall, in the absence of willful misconduct or gross negligence, be responsible to either Debtor for any act or failure to act pursuant to this Section 3.

4. **Performance by Secured Party of Debtors' Obligations.** If either Debtor fails to perform or comply with any of its agreements or covenants contained in this Agreement and the Secured Party performs or complies, or otherwise causes performance or compliance, with such agreement or covenant in accordance with the terms of this Agreement, then the reasonable expenses of the Secured Party incurred in connection with such performance or compliance shall be payable by the Debtors to the Secured Party on demand and shall constitute Obligations secured by this Agreement.

5. **Remedies.**

(a) In addition to all other rights and remedies granted to it under this Agreement and the Transaction Agreements and under any other instrument or agreement securing, evidencing or relating to any of the Obligations, if any Event of Default shall have occurred and be continuing, the Secured Party may exercise all rights and remedies of a secured party under the New Jersey Uniform Commercial Code (the "UCC"). Upon the occurrence of an Event of Default, the Secured Party shall have the right upon a public sale or sales of the Collateral, and, to the extent permitted by law, upon any such private sale or sales of the Collateral, to purchase for the benefit of the Secured Party, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Debtor hereby releases. In addition, the Secured Party shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to bid for all or any part of the Collateral, free of any right or equity of redemption, which equity of each Debtor hereby releases, and the amount of any such bid need not be paid by the Secured Party but shall be credited against the Obligations. Such sales may be adjourned and continued from time to time with or without notice. The Secured Party shall have the right to conduct such sales on each Debtor's premises or elsewhere and shall have the right to use such Debtor's premises without charge for such time or times as the Secured Party deems necessary or advisable.

(b) Each Debtor further agrees that upon the occurrence and during the continuation of an Event of Default, at the Secured Party's request, it will assemble the Collateral and make it available to the Secured Party at places which the Secured Party shall select, whether at such Debtor's premises or elsewhere for sale, lease, or other disposition. Until the Secured Party is able to effect such a sale, lease, or other disposition of Collateral, the Secured Party shall have the right to hold or use Collateral, or any part thereof, to the extent that they deem appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Secured Party. The Secured Party shall have no obligation to any Debtor to maintain or preserve the rights of such Debtor as against third parties with respect to Collateral while Collateral is in the possession of the Secured Party. The Secured Party may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Secured Party's remedies (for the benefit of the Secured Party), with respect to such appointment without prior notice or hearing as to such appointment. The Secured Party shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Obligations as provided in the Transaction Agreements, and only after so paying over such net proceeds, and after the payment by the Secured Party of any other amount required by any provision of law, need the Secured Party account for the surplus, if any, to the Debtors. To the maximum extent permitted by applicable law, each Debtor waives all claims, damages, and demands against the Secured Party arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or willful misconduct of the Secured Party as finally determined by a court of competent jurisdiction. Each Debtor agrees that five (5) days prior written notice by Secured Party of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Each Debtor shall remain jointly and severally liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any attorneys' fees or other expenses incurred by the Secured Party to collect such deficiency.

(c) Except as otherwise specifically provided herein, each Debtor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

6. **Limitation on Duties Regarding Preservation of Collateral.** The Secured Party's sole duty with respect to the custody, safekeeping and preservation of the Collateral shall be to deal with it in the same manner as the Secured Party deals with similar property for its own account. Neither the Secured Party nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Debtor or otherwise.

7. **Powers Coupled with an Interest.** All authorizations and agencies contained in this Agreement with respect to the Collateral are irrevocable and coupled with an interest.

8. **No Waiver; Cumulative Remedies.** The Secured Party shall not by any act (except by a written instrument pursuant to Section 9(a) hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default under the Transaction Agreements or in any breach of any of the terms and conditions of this Agreement. No failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Secured Party of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy which the Secured Party would otherwise have on any subsequent occasion. The rights and remedies provided in this Agreement are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

9. **Miscellaneous.**

(a) **Amendments and Waivers.** Any term of this Agreement may be amended with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 9(a) shall be binding upon the parties and their respective successors and assigns.

(b) **Transfer; Successors and Assigns**. The terms and conditions of this Agreement shall be binding upon each Debtor and its successors and assigns and inure to the benefit of the Secured Party and its successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(c) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(e) **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(f) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(g) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(h) **Entire Agreement.** This Agreement, and the documents referred to herein constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the parties hereto concerning such subject matter are expressly canceled.

[**SIGNATURE PAGE FOLLOWS**]

The Debtor and Secured Party have caused this Agreement to be duly executed and delivered as of the date first above written.

**DEBTOR:**

UCA Services, Inc., d/b/a NetFabric Technologies, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**DEBTOR:**

NetFabric Holdings, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**SECURED PARTY:**

Fortify Infrastructure Services, Inc.

By: /s/

Name: Rajkumar Velagapudi

Address: 2340 Walsh Avenue, Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

**SIGNATURE PAGE TO SECURITY AGREEMENT**

**EXHIBIT A**

**COLLATERAL OF UCA SERVICES, INC.**

The Collateral shall consist of all assets of Debtor, including without limitation all right, title and interest of Debtor in and to the following:

(a) All personal property, goods and equipment now owned or hereafter acquired, including without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory, now owned or hereafter acquired, including without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Debtor's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Debtor's books relating to any of the foregoing;

(c) All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, easements, rights-of-way, goodwill, trademarks, servicemarks, trade styles, trade names, patents, patent applications, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, causes of action, claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Debtor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Debtor, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Debtor and Debtor's Books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, securities, letters of credit, certificates of deposit, instruments and chattel paper now owned or hereafter acquired and Debtor's books relating to the foregoing;

(f) All copyrights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; all mask work or similar rights available for the protection of semiconductor devices, now owned or hereafter acquired; all claims for damages by way of any past, present and future infringement of any of the foregoing;

(g) All real property, leases of real property, easements, right-of-way, fiber conduit, man holes and hand holes, and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located; and

(i) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof.

**EXHIBIT A**

**COLLATERAL OF NETFABRIC HOLDINGS, INC.**

The Collateral shall consist of all assets of Debtor, including without limitation all right, title and interest of Debtor in and to the following:

(a) All personal property, goods and equipment now owned or hereafter acquired, including without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory, now owned or hereafter acquired, including without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Debtor's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Debtor's books relating to any of the foregoing;

(c) All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, easements, rights-of-way, goodwill, trademarks, servicemarks, trade styles, trade names, patents, patent applications, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, causes of action, claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Debtor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Debtor, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Debtor and Debtor's Books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, securities, letters of credit, certificates of deposit, instruments and chattel paper now owned or hereafter acquired and Debtor's books relating to the foregoing;

(f) All copyrights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; all mask work or similar rights available for the protection of semiconductor devices, now owned or hereafter acquired; all claims for damages by way of any past, present and future infringement of any of the foregoing;

(g) All real property, leases of real property, easements, right-of-way, fiber conduit, man holes and hand holes, and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located; and

(i) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof.

# STOCK PLEDGE AGREEMENT

This Stock Pledge Agreement (this "Agreement"), dated as of March 12, 2009, by and between Fortify Infrastructure Services, Inc., a Delaware corporation, Ltd. (the "Secured Party"), and NetFabric Holdings, Inc., a Delaware corporation (the "Company" or the "Pledgor").

## BACKGROUND

Secured Party has (i) purchased a Secured Promissory Note of even date herewith (the "Note") from NetFabric Technologies, Inc. d/b/a UCA Services, Inc., a New Jersey corporation and a wholly-owned subsidiary of Pledgor ("UCA") pursuant to which UCA is borrowing $5,000,000.00 from Secured Party in accordance with the terms and conditions set forth in the Note and the Convertible Note Purchase Agreement of even date herewith (the "Note Purchase Agreement"), and (ii) agreed to extend a credit facility to UCA in an amount not to exceed $1,000,000.00 from which UCA may draw upon for working capital purposes pursuant to the terms and conditions set forth in the Credit Agreement of even date herewith (the "Credit Agreement"). In addition to Pledgor's obligation under this Agreement, Pledgor has guaranteed the obligations of UCA under each of the Note, the Note Purchase Agreement and the Credit Agreement (collectively, the "Guarantees") on the terms set forth therein and herein and as set forth in that certain Security Agreement of even date herewith (the "Security Agreement").

In connection with the Note, the Note Purchase Agreement and the Credit Agreement, Pledgor and the Secured Party have entered into an Option Agreement of even date herewith (the "Option Agreement") pursuant to which Pledgor has granted to Secured Party the option to purchase all of the equity securities of UCA currently owned or hereafter acquired by Pledgor on the terms and conditions set forth therein. The Note, the Note Purchase Agreement, the Credit Agreement, the Security Agreement, the Option Agreement and this Agreement are referred to herein as the "Transaction Agreements."

The parties intend that Pledgor's obligations under the Transaction Agreements, including Pledgor's guarantee of UCA's obligations thereunder, be secured by a pledge of all of the equity securities of UCA currently owned or hereafter acquired by Pledgor on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties, intending to be legally bound, hereto agree as follows:

1. Pledge and Grant of Security Interest. To secure the full and timely performance of all of obligations and liabilities to the Secured Party pursuant to the Transaction Agreements (including, without limitation, UCA's obligation to timely pay the principal amount of, and interest on, the Note and amounts drawn pursuant to the Credit Agreement) (the "Obligations") the Pledgor hereby pledges, assigns, hypothecates, transfers and grants a security interest to Secured Party in all of the following (the "Collateral"):

(a) the shares of stock set forth on Schedule A annexed hereto and expressly made a part hereof (together with any additional shares of stock or other equity interests acquired by the Pledgor, the "Pledged Stock"), the certificates representing the Pledged Stock and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Stock;

(b) all additional shares of stock of UCA from time to time acquired by any Pledgor in any manner, including, without limitation, stock dividends or a distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off (which shares shall be deemed to be part of the Collateral), and the certificates representing such additional shares, and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares; and

(c) all options and rights, whether as an addition to, in substitution of or in exchange for any shares of any Pledged Stock and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all such options and rights.

2. Delivery of Collateral. All certificates representing or evidencing the Pledged Stock shall be delivered to and held by or on behalf of Secured Party together with an Assignment Separate from Certificate in the form attached to this Agreement as Schedule B executed by Pledgor. Pledgor hereby authorizes UCA upon demand by the Secured Party to deliver any certificates, instruments or other distributions issued in connection with the Collateral directly to the Secured Party, in each case to be held by the Secured Party, subject to the terms hereof. Upon the occurrence and during the continuance of an Event of Default (as defined below), the Secured Party shall have the right, during such time in its discretion and without notice to the Pledgor, to transfer to or to register in the name of the Secured Party or any of its nominees any or all of the Pledged Stock. In addition, the Secured Party shall have the right at such time to exchange certificates or instruments representing or evidencing Pledged Stock for certificates or instruments of smaller or larger denominations.

3. Representations and Warranties of Pledgor. Pledgor represents and warrants to the Secured Party (which representations and warranties shall be deemed to continue to be made until all of the Obligations have been satisfied in full) that:

(a) the execution, delivery and performance by Pledgor of this Agreement and the pledge of the Collateral hereunder do not and will not result in any violation of any agreement, indenture, instrument, license, judgment, decree, order, law, statute, ordinance or other governmental rule or regulation applicable to Pledgor;

(b) this Agreement constitutes the legal, valid, and binding obligation of Pledgor enforceable against Pledgor in accordance with its terms;

(c) all Pledged Stock owned by Pledgor is set forth on Schedule A hereto and Pledgor is the direct and beneficial owner of each share of the Pledged Stock;

(d) all of the shares of the Pledged Stock have been duly authorized, validly issued and are fully paid and nonassessable;

(e) no consent or approval of any person, corporation, governmental body, regulatory authority or other entity, is or will be necessary for (i) the execution, delivery and performance of this Agreement, (ii) the exercise by the Secured Party of any rights with respect to the Collateral or (iii) the pledge and assignment of, and the grant of a security interest in, the Collateral hereunder;

(f) there are no pending or, to the best of Pledgor's knowledge, threatened actions or proceedings before any court, judicial body, administrative agency or arbitrator which may materially adversely affect the Collateral;

(g) Pledgor has the requisite power and authority to enter into this Agreement and to pledge and assign the Collateral to the Secured Party in accordance with the terms of this Agreement;

(h) Pledgor owns each item of the Collateral and, except for the pledge and security interest granted to Secured Party hereunder, the Collateral shall be, immediately following the closing of the transactions contemplated by the Transaction Agreements, free and clear of any other security interest, mortgage, pledge, claim, lien, charge, hypothecation, assignment, offset or encumbrance whatsoever and are not subject to preemptive rights or rights of first refusal created by statute, the Certificate of Incorporation or Bylaws of UCA or any agreement to which UCA is a party or by which it is bound (collectively, "Liens");

(i) there are no restrictions on transfer of the Pledged Stock contained in the Certificate of Incorporation or Bylaws (or equivalent organizational documents) of UCA or otherwise which have not otherwise been enforceably and legally waived by the necessary parties;

(j) none of the Pledged Stock has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject;

(k) the pledge and assignment of the Collateral and the grant of a security interest under this Agreement vest in the Secured Party all rights of Pledgor in the Collateral as contemplated by this Agreement; and

(l) the Pledged Stock constitutes one hundred percent (100%) of the issued and outstanding shares of capital stock of UCA. Other than the transactions contemplated by the Transaction Agreement, there are no other outstanding shares of capital stock or voting securities and no outstanding commitments to issue any shares of capital stock or voting securities of UCA. All outstanding shares of UCA's Common Stock were issued in compliance with all applicable federal and state securities laws. There are no options, warrants, calls, rights, commitments, agreements or arrangements of any character to which UCA is a party or by which UCA is bound relating to the issued or unissued capital stock of UCA or obligating UCA to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of capital stock of UCA or obligating UCA to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no contracts, commitments or agreements relating to voting, purchase or sale of UCA's capital stock (i) between or among UCA and any of its stockholders and (ii) between or among any of UCA's stockholders.

4. Covenants. Pledgor covenants that, until the Obligations shall be indefeasibly satisfied in full:

(a) Pledgor will not sell, assign, transfer, convey, or otherwise dispose of its rights in or to the Collateral or any interest therein; nor will Pledgor create, incur or permit to exist any Lien whatsoever with respect to any of the Collateral or the proceeds thereof other than that created hereby.

(b) Pledgor will, at its expense, defend Secured Party's right, title and security interest in and to the Collateral against the claims of any other party.

(c) Pledgor shall at any time, and from time to time, upon the written request of Secured Party, execute and deliver such further documents and do such further acts and things as Secured Party may reasonably request in order to effectuate the purposes of this Agreement including, but without limitation, delivering to Secured Party, upon the occurrence of an Event of Default, irrevocable proxies in respect of the Collateral in form satisfactory to Secured Party. Until receipt thereof, upon an Event of Default that has occurred, this Agreement shall constitute Pledgor's proxy to Secured Party or its nominee to vote all shares of Collateral then registered in each Pledgor's name.

(d) Pledgor will not consent to or approve the issuance of (i) any additional shares of any class of capital stock or other equity interests of UCA; or (ii) any securities convertible either voluntarily by the holder thereof or automatically upon the occurrence or nonoccurrence of any event or condition into, or any securities exchangeable for, any such shares, unless, in either case, such shares are pledged as Collateral pursuant to this Agreement.

5. Voting Rights and Dividends. In addition to the Secured Party's rights and remedies set forth in Section 8 hereof, in case an Event of Default shall have occurred and be continuing, the Secured Party shall (i) be entitled to vote the Collateral, (ii) be entitled to give consents, waivers and ratifications in respect of the Collateral (Pledgor hereby irrevocably constituting and appointing the Secured Party, with full power of substitution, the proxy and attorney-in-fact of Pledgor for such purposes) and (iii) be entitled to collect and receive for its own use dividends paid on the Collateral. Pledgor shall not be permitted to exercise or refrain from exercising any voting rights or other powers if, in the reasonable judgment of the Secured Party, such action would have a material adverse effect on the value of the Collateral or any part thereof; and, provided, further, that each Pledgor shall give at least five (5) days' written notice of the manner in which such Pledgor intends to exercise, or the reasons for refraining from exercising, any voting rights or other powers other than with respect to any election of directors and voting with respect to any incidental matters. Following the occurrence of an Event of Default, all dividends and all other distributions in respect of any of the Collateral, shall be delivered to the Secured Party to hold as Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Secured Party, be segregated from the other property or funds of any other Pledgor, and be forthwith delivered to the Secured Party as Collateral in the same form as so received (with any necessary endorsement).

6. Event of Default. An "Event of Default" under this Agreement shall occur upon the happening of any of the following events:

(a) UCA or Pledgor shall have failed to pay as and when due any principal or interest under the Note or the Credit Agreement;

(b) An "Event of Default" under any Transaction Agreement or any agreement or note related to any Document shall have occurred and be continuing (including any breach of any representation or warranty in any Transaction Agreement);

(c) Any breach of any representation or warranty of Pledgor or UCA made herein, in any Transaction Agreement or in any agreement, statement or certificate given in writing pursuant hereto or thereto or in connection herewith or therewith;

(d) Any portion of the Collateral is subjected to a levy of execution, attachment, distraint or other judicial process or any portion of the Collateral is the subject of a claim (other than by the Secured Party) of a Lien or other right or interest in or to the Collateral and such levy or claim shall not be cured, disputed or stayed within a period of fifteen (15) business days after the occurrence thereof; or

(e) Pledgor shall (i) apply for, consent to, or suffer to exist the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or other fiduciary of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of creditors, (iii) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (iv) be adjudicated as bankrupt or insolvent, (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) acquiesce to, or fail to have dismissed, within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing.

7. Remedies. In case an Event of Default shall have occurred and is continuing, the Secured Party may:

(a) Transfer any or all of the Collateral into its name, or into the name of its nominee or nominees;

(b) Exercise all corporate rights with respect to the Collateral including, without limitation, all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any shares of the Collateral as if it were the absolute owner thereof, including, but without limitation, the right to exchange, at its discretion, any or all of the Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of UCA thereof, or upon the exercise by UCA of any right, privilege or option pertaining to any of the Collateral, and, in connection therewith, to deposit and deliver any and all of the Collateral with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine, all without liability except to account for property actually received by it; and

(c) Subject to any requirement of applicable law, sell, assign and deliver the whole or, from time to time, any part of the Collateral at the time held by the Secured Party, at any private sale or at public auction, with or without demand, advertisement or notice of the time or place of sale or adjournment thereof or otherwise (all of which are hereby waived, except such notice as is required by applicable law and cannot be waived), for cash or credit or for other property for immediate or future delivery, and for such price or prices and on such terms as the Secured Party in its sole discretion may determine, or as may be required by applicable law.

Pledgor hereby waives and releases any and all right or equity of redemption, whether before or after sale hereunder. At any such sale, unless prohibited by applicable law, the Secured Party may bid for and purchase the whole or any part of the Collateral so sold free from any such right or equity of redemption. All moneys received by the Secured Party hereunder, whether upon sale of the Collateral or any part thereof or otherwise, shall be held by the Secured Party and applied by it as provided in Section 9 hereof. No failure or delay on the part of the Secured Party in exercising any rights hereunder shall operate as a waiver of any such rights nor shall any single or partial exercise of any such rights preclude any other or future exercise thereof or the exercise of any other rights hereunder. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income thereon nor any duty as to preservation of any rights pertaining thereto, except to apply the funds in accordance with the requirements of Section 10 hereof. The Secured Party may exercise its rights with respect to property held hereunder without resort to other security for or sources of reimbursement for the Obligations. In addition to the foregoing, Secured Party shall have all of the rights, remedies and privileges of a secured party under the New Jersey Uniform Commercial Code (the "UCC") regardless of the jurisdiction in which enforcement hereof is sought.

8. Private Sale. Pledgor recognizes that the Secured Party may be unable to effect (or to do so only after delay which would adversely affect the value that might be realized from the Collateral) a public sale of all or part of the Collateral by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Pledgor agrees that any such private sale may be at prices and on terms less favorable to the seller than if sold at public sales and that such private sales shall be deemed to have been made in a commercially reasonable manner. Pledgor agrees that the Secured Party has no obligation to delay sale of any Collateral for the period of time necessary to permit UCA to register the Collateral for public sale under the Securities Act.

9. Proceeds of Sale. The proceeds of any collection, recovery, receipt, appropriation, realization or sale of the Collateral shall be applied by the Secured Party as follows:

(a) First, to the payment of all costs, reasonable expenses and charges of the Secured Party and to the reimbursement of the Secured Party for the prior payment of such costs, reasonable expenses and charges incurred in connection with the care and safekeeping of the Collateral (including, without limitation, the reasonable expenses of any sale or any other disposition of any of the Collateral), attorneys' fees and reasonable expenses, court costs, any other fees or expenses incurred or expenditures or advances made by Secured Party in the protection, enforcement or exercise of its rights, powers or remedies hereunder;

(b) Second, to the satisfaction of the Obligations, in whole or in part, in such order as the Secured Party may elect, whether or not such Obligations is then due;

(c) Third, to such persons, firms, corporations or other entities as required by applicable law including; and

(d) Fourth, to the extent of any surplus to Pledgor or as a court of competent jurisdiction may direct.

In the event that the proceeds of any collection, recovery, receipt, appropriation, realization or sale are insufficient to satisfy the Obligations, Pledgor shall be liable for the deficiency plus the costs and fees of any attorneys employed by Secured Party to collect such deficiency.

10. Waiver of Marshaling. Pledgor hereby waives any right to compel any marshaling of any of the Collateral.

11. No Waiver. Any and all of the Secured Party's rights with respect to the Liens granted under this Agreement shall continue unimpaired, and Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) the bankruptcy, insolvency or reorganization of Pledgor, (b) the release or substitution of any item of the Collateral at any time, or of any rights or interests therein, or (c) any delay, extension of time, renewal, compromise or other indulgence granted by the Secured Party in reference to any of the Obligations. Pledgor hereby waives all notice of any such delay, extension, release, substitution, renewal, compromise or other indulgence, and hereby consents to be bound hereby as fully and effectively as if Pledgor had expressly agreed thereto in advance. No delay or extension of time by the Secured Party in exercising any power of sale, option or other right or remedy hereunder, and no failure by the Secured Party to give notice or make demand, shall constitute a waiver thereof, or limit, impair or prejudice the Secured Party's right to take any action against Pledgor or to exercise any other power of sale, option or any other right or remedy.

12. Expenses. The Collateral shall secure, and Pledgor shall pay to Secured Party on demand, from time to time, all reasonable costs and expenses, (including but not limited to, reasonable attorneys' fees and costs, taxes, and all transfer, recording, filing and other charges) of, or incidental to, the custody, care, transfer, administration of the Collateral or any other collateral, or in any way relating to the enforcement, protection or preservation of the rights or remedies of the Secured Party under this Agreement or with respect to any of the Obligations.

13. The Secured Party Appointed Attorney-In-Fact and Performance by the Secured Party. Upon the occurrence of an Event of Default, Pledgor hereby irrevocably constitutes and appoints the Secured Party as Pledgor's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to do in Pledgor's name, place and stead, all such acts, things and deeds for and on behalf of and in the name of Pledgor, which Pledgor could or might do or which the Secured Party may deem necessary, desirable or convenient to accomplish the purposes of this Agreement, including, without limitation, to execute such instruments of assignment or transfer or orders and to register, convey or otherwise transfer title to the Collateral into the Secured Party's name. Pledgor hereby ratifies and confirms all that said attorney-in-fact may so do and hereby declares this power of attorney to be coupled with an interest and irrevocable. If Pledgor fails to perform any agreement herein contained, the Secured Party may itself perform or cause performance thereof, and any costs and expenses of the Secured Party incurred in connection therewith shall be paid by the Pledgor as provided in Section 9 hereof.

14. Recapture. Notwithstanding anything to the contrary in this Agreement, if the Secured Party receives any payment or payments on account of the Obligations, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally, common law or equitable doctrine, then to the extent of any sum not finally retained by the Secured Party, Pledgor's obligations to the Secured Party shall be reinstated and this Agreement shall remain in full force and effect (or be reinstated) until payment shall have been made to Secured Party, which payment shall be due on demand.

15. Captions. All captions in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

16. Miscellaneous.

(a) This Agreement constitutes the entire and final agreement among the parties with respect to the subject matter hereof and may not be changed, terminated or otherwise varied except by a writing duly executed by the parties hereto.

(b) No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

(c) In the event that any provision of this Agreement or the application thereof to Pledgor or any circumstance in any jurisdiction governing this Agreement shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provision to parties, jurisdictions, or circumstances other than to whom or to which it is held invalid or unenforceable shall not be affected thereby, nor shall same affect the validity or enforceability of any other provision of this Agreement.

(d) This Agreement shall be binding upon Pledgor, and Pledgor's successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns.

(e) Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(f) THIS AGREEMENT AND THE OTHER DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(g) Any term of this Agreement may be amended with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 16(g) shall be binding upon the parties and their respective successors and assigns.

(h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed an original signature hereto.

[**SIGNATURE PAGE FOLLOWS**]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

**PLEDGOR:**

NetFabric Holdings, Inc.

By: /s/
Fahad Syed, CEO

Address: 299 Cherry Hill Road
Parsippany, NJ 07054

Facsimile Number: 973-384-9061

**SECURED PARTY:**

Fortify Infrastructure Services, Inc.

By: /s/

Name: Rajkumar Velagapudi

Address: 2340 Walsh Avenue, Suite A
Santa Clara, CA 95051

Facsimile Number: 408-416-3237

**SIGNATURE PAGE TO PLEDGE AGREEMENT**

**SCHEDULE A to the Stock Pledge Agreement**

**Pledged Stock**

| Pledgor | Issuer | Class of Stock | Stock Certificate Number | Par Value | Number of Shares | % of outstanding Shares |
|---|---|---|---|---|---|---|
| NetFabric Holdings, Inc. | UCA Services, Inc. | Common | | None | 3,000,000 | 100 |

**SCHEDULE A to the Stock Pledge Agreement**

**Assignment Separate from Certificate**

**ASSIGNMENT SEPARATE FROM CERTIFICATE**

FOR VALUE RECEIVED and pursuant to that certain Pledge Agreement between the undersigned ("Pledgor") and Fortify Infrastructure Services, Inc. (the "Secured Party") dated February __, 2009 (the "Agreement"), Pledgor hereby sells, assigns and transfers unto the Secured Party _____ (_____) shares of the Common Stock of UCA Services Inc., d/b/a NetFabric Technologies, Inc. ("UCA"), standing in Pledgor's name on the books of UCA and represented by Certificate No. ____, and does hereby irrevocably constitute and appoint _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

NetFabric Holdings, Inc.

By: _____

Name: Fahad Syed
Title: CEO

Instruction: Please do not fill in any blanks other than the signature line(s). The purpose of this assignment is to perfect the security interest of the Company pursuant to the Agreement.

# OPTION AND PURCHASE AGREEMENT

dated as of

March 12, 2009

by and among

**FORTIFY INFRASTRUCTURE SERVICES, INC.**,

**NETFABRIC TECHNOLOGIES, INC. D/B/A UCA SERVICES, INC.,**

and

**NETFABRIC HOLDINGS, INC.**

**OPTION AND PURCHASE AGREEMENT**

THIS OPTION AND PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the 12th day of March, 2009 (the "Effective Date"), by and among Fortify Infrastructure Services, Inc., a Delaware corporation (the "Purchaser"), NetFabric Technologies, Inc. d/b/a UCA Services, Inc., a New Jersey corporation (the "Company") and NetFabric Holdings, Inc., a Delaware corporation (the "Seller"). The Company is a wholly owned subsidiary of the Seller. Purchaser, the Company and Seller shall each be referred to in this Agreement as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, Purchaser desires to obtain from Seller an option to purchase all of the outstanding capital stock of the Company (the "Option") and Seller desires to grant to Purchaser an option to purchase all of the outstanding capital stock of the Company (the "Purchase") on the terms and conditions set forth in this Agreement; and

WHEREAS, in connection with the Option, as of even date herewith (a) Purchaser and the Company desire to enter into a Convertible Note Purchase Agreement in order for Seller to issue to Purchaser a Convertible Promissory Note and for Purchaser to provide to Seller a bridge loan of $5 million to be used (i) in part by the Company to repay all outstanding principal and accrued interest on existing indebtedness of the Company, (ii) in part by the Seller to repay certain of its liabilities, (iii) in part by the Seller and the Company to pay costs related to the transactions contemplated by this Agreement, and (iv) in part by the Seller and the Company for purposes of working capital, (b) Purchaser, Seller and the Company desire to enter into a Credit Agreement in order for Purchaser to provide to the Company a revolving line of credit of up to $1 million for working capital purposes, (c) Purchaser, Seller and the Company desire to enter a Security Agreement to secure the loans advanced as described in the preceding clauses, and (d) Purchaser and Seller desire to enter into a Stock Pledge Agreement to secure the loans advanced as described in the preceding clauses, all in accordance with their terms. This Agreement, the Convertible Note Purchase Agreement, the Convertible Promissory Note, the Credit Agreement, the Security Agreement and the Stock Pledge Agreement are referred to herein as the "Transaction Agreements."

NOW, THEREFORE, in consideration of the mutual promises, agreements, warranties and provisions contained in this Agreement, intending to be legally bound, the parties agree as follows:

**SECTION 1**
**OPTION TO PURCHASE STOCK**

1. **Option to Purchase Stock**. Subject to the terms and conditions of this Agreement, Seller hereby grants to Purchaser this Option to purchase at the Closing (as defined below), all of the shares of capital stock of the Company outstanding as of the Closing (the "Shares") for the purchase price payable in accordance with Section 2 below. Purchaser will, by written notice to Seller, exercise the Option within two (2) business days after receipt of written notification from Seller certifying the effectiveness of the Seller's Definitive Schedule 14C Information Statement filed with the Securities and Exchange Commission (the "SEC") (the "Definitive Information Statement") in connection with certain actions taken by the written consent of the holders of a majority of the Seller's outstanding Common Shares approving the terms of this Agreement and related transactions described in the Definitive Information Statement, following the satisfaction (or waiver, as the case may be) of (i) Section 2.4(c)(iii) below; and (ii) the conditions precedent set forth in Section 7 of this Agreement, which shall take place no later than three (3) Business Days following the date Purchaser exercises the Option (the "Closing Date"). The foregoing notwithstanding, this Option will expire on the date which is six (6) months from the Effective Date unless extended by Purchaser in writing (the "Option Expiration Date").

**SECTION 2**
**CLOSING**

2. **Closing**.

2.1 **Closing Date**. The closing of the Purchase (the "Closing") shall be held at the offices of Royse Law Firm, PC, 2600 El Camino Real, Suite 110, Palo Alto, CA 94306 at 10:00 a.m. California time on the Closing Date.

2.2 **Purchase Price.** As full consideration for the purchase of the Shares upon exercise of the Option, Purchaser agrees to (i) release Seller from its guarantees and obligations under the Transaction Agreements, and (ii) pay to Seller as purchase consideration the sum of (a) $500,000.00 *less* the amount of accrued and unpaid interest on the Convertible Promissory Note as of the Closing Date (if any), which shall be paid on the date which is 365 days following the Closing Date and which shall be evidenced by a unsecured promissory note (the "Unsecured Note") in substantially the form attached hereto as Exhibit A, *plus* (b) the amounts specified as payable to Seller (and not allocated to the Bonus Pool) in Section 3.1 below (all such consideration, collectively, the "Purchase Price"). For the avoidance of doubt, amounts paid under Section 3.1 which are allocated to the Bonus Pool shall not be considered Purchase Price.

2.3 **Actions at the Effective Date.** As of the Effective Date:

(a) **Actions by Seller**. Seller will deliver to Purchaser the items set forth below:

(i) Fahad Syed will deliver an employment and non-competition agreement substantially in the form of Exhibit B-1, executed by him (the "Employment and Non-Competition Agreement")

(ii) Schedule 1 attached hereto contains a list of key employees (the "Key Employees") who will, within thirty (30) days, (unless extended by Purchaser) deliver a non-competition agreement substantially in the form of Exhibit B-2, executed by him or her (the "Non-Competition Agreement");

(iii) Seller will deliver a certificate pursuant to Section 7.3(c)(ii) executed by its Chief Executive Officer and Chief Financial Officer confirming (A) Seller's compliance with, and performance of, the covenants and obligations to be performed or complied with by it at or before the Effective Date, and (B) the accuracy of the Seller's representations and warranties as of the Effective Date;

(iv) Seller will deliver a certificate executed by the Secretary of Seller certifying the items set forth in Section 7(c)(v)(A) and (C) below;

(v) Seller's counsel will deliver to Purchaser an opinion in the form set forth on Exhibit C attached hereto;

(vi) Seller's immigration counsel will deliver to Purchaser an opinion in the form set forth on Exhibit D attached hereto; and

(v) Seller shall deliver all documents required of Seller to be delivered as of the Effective Date pursuant to this Agreement

(b) **Actions by the Company**. The Company will deliver to Purchaser the items set forth below:

(i) a certificate pursuant to Section 7.3(c)(i) executed by the President and the Chief Financial Officer of the Company confirming (A) the Company's compliance with, and performance of, the covenants and obligations to be performed or complied with by the Company at or before the Closing; (B) the accuracy of the Company's representations and warranties as of the Effective Date;

(ii) a certificate executed by the Secretary of the Company certifying the items set forth in Section 7.3(c)(iv) below; and

(iii) The Company shall deliver all documents required of the Company to be delivered as of the Effective Date pursuant to this Agreement.

(c) **Actions by the Purchaser**. The Company will deliver to Purchaser the items set forth below:

(i) Purchaser shall deliver all documents required of Purchaser to be delivered as of the Effective Date pursuant to this Agreement; and

(ii) Purchaser shall deliver to Seller a certificate executed by the President and Chief Executive Officer certifying the items set forth in Sections 7.2(a) and (b) below.

2.4 **Actions at the Closing**. At the Closing, the Company, Seller and Purchaser shall take such actions and execute and deliver such agreements and other instruments and documents as necessary or appropriate to effect the transactions contemplated by this Agreement in accordance with its terms, including without limitation the following:

(a) **Actions by Seller**. Seller will deliver to Purchaser the items set forth below:

(i) Seller will deliver a certificate or certificates representing all of Seller's Shares, together with stock powers duly endorsed in blank for transfer of such Shares to Purchaser, and Seller shall deliver all other documents required of the Seller pursuant to this Agreement;

(ii) Seller shall have transferred and assigned to the Company all assets listed on its books (including, without limitation, all tangible and intangible assets) which relate to the Company and shall have provided to Purchaser (i) a schedule of such intangible assets assigned and transferred and (ii) appropriate documentation reflecting such assignment.

(iii) Seller will deliver a certificate pursuant to Section 7.3(c)(ii) executed by its Chief Executive Officer and Chief Financial Officer confirming (A) Seller's compliance with, and performance of, the covenants and obligations to be performed or complied with by it at or before the Closing, and (B) the accuracy of the Seller's representations and warranties as of the Closing Date; and

(iv) Seller will deliver a certificate executed by the Secretary of Seller certifying the items set forth in Section 7(c)(v) below;

(v) Seller's counsel will deliver to Purchaser an opinion in the form set forth on Exhibit C attached hereto; and

(vi) Seller's immigration counsel will deliver to Purchaser an opinion in the form set forth on Exhibit D attached hereto.

(b) **Actions by the Company**. The Company will deliver to Purchaser the items set forth below:

(i) a certificate pursuant to Section 7.3(c)(i) executed by the President and the Chief Financial Officer of the Company confirming (A) the Company's compliance with, and performance of, the covenants and obligations to be performed or complied with by the Company at or before the Closing; (B) the accuracy of the Company's representations and warranties as of the Closing Date;

(ii) a certificate executed by the Chief Financial Officer of the Company certifying the items set forth in Section 7.3(c)(iii) below;

(iii) a certificate executed by the Secretary of the Company certifying the items set forth in Section 7.3(c)(iv) below; and

(iv) the Company shall have transferred and assigned to the Seller all of the Company's right, interest and title to any ownership interest in any securities or assets of any kind with respect to any subsidiary of the Company and Seller shall have agreed to assume any and all obligations and/or liabilities related thereto; the Company shall have provided to Purchaser appropriate documentation reflecting such assignment;

(v) Schedule 1B contains a complete list of billable and non-billable employees (the "Schedule 1B Employees"). At or prior to closing the non-billable Schedule 1B Employees, will deliver a non-competition agreement substantially in the form of Exhibit B-2, executed by him or her (the "Non-Competition Agreement"); provided, however that those non-billable Schedule 1B Employees who have a valid existing non-competition and non-disclosure agreement in place with the Company shall not be required to execute the Non-Competition Agreement.

(c) **Actions by Purchaser**.

(i) Purchaser shall deliver all documents required of Purchaser pursuant to this Agreement;

(ii) Purchaser shall deliver to Seller a certificate executed by the President and Chief Executive Officer certifying the items set forth in Sections 7.2(a) and (b) below; and

(iii) Purchaser and Seller shall execute documents, satisfactory to Seller, evidencing the release of any and all obligations of the Seller under the Security Agreement.

2.5 **Purchase of Common Stock**. The Shares to be purchased by Purchaser at the Closing shall consist solely of the Company's Common Stock, and at such time there shall be no other outstanding securities of or rights to purchase or otherwise acquire securities of the Company. Accordingly, prior to the Closing, each outstanding share of the Company Preferred Stock, if any, shall have been converted into the Common Stock of the Company and all options or rights to purchase or acquire shares of the Company's capital stock, if any, shall have been exercised or terminated.

2.6 **Tax Elections**. At Purchaser's exclusive option, Purchaser and Seller agree that they shall cooperate in making a joint Section 338(h)(10) election under the Internal Revenue Code of 1986, as amended (the "Code") (and any comparable state income tax laws), to treat the Purchase of the Shares pursuant to this Agreement as a purchase of assets rather than of stock for federal and state income tax purposes, as more particularly described in Section 11 below. Seller agrees to make such elections on its own federal and state income tax returns, and to prepare and file with the Internal Revenue Service all such filings and forms as may be necessary in order to effect such Section 338(h)(10) election (and any comparable state election).

**SECTION 3**
**EARN-OUT PAYMENTS**

3. **Earn-Out Payments**. Additional payments are, or may be, payable to Seller and Employees based on the Company's operating performance pursuant to the Incentive Plan as set forth in Section 3.2 below.

3.1 **Earn-Out Payments**. Cash payments of up to $2,500,000.00 in the aggregate ("Earn-Out Payments") shall be payable to Seller and Employees if the Company achieves the financial thresholds specified below for the 12-month period beginning April 1, 2009 and ending March 31, 2010 ("Year 1") and the subsequent 12-month period beginning April 1, 2010 and ending March 31, 2011 ("Year 2"). As used in this Section 3.1, "Revenues" shall mean the Company's revenues from customers as determined in accordance with generally accepted accounting principles less returns, discounts and allowances, including without limitation allowances for any uncollectible amounts; and "EBITDA" shall mean the Company's earnings before interest, depreciation and taxes. For avoidance of doubt, all earn-out payments made to Seller pursuant to this Section 3.1 shall be credited against the Purchase Price set forth in Section 2.2.

(a) **Year 1 Earn-Out Payment**. The maximum Earn-Out Payment that may be earned for Year 1 is $1,250,000.00 (the "Maximum Threshold"), which shall be allocated (a) $250,000.00 to Seller, and (b) $1,000,000.00 to the Bonus Pool (up to $500,000 of which shall be payable to Fahad Syed). No Earn-Out Payments for Year 1 will be payable unless the Company achieves both of the following "Year 1 Minimum Thresholds": (a) Revenues equal to at least $14.4 million (the "Revenue Minimum Threshold") and (b) EBITDA of at least $1 million (the "EBITDA Minimum Threshold"). "Year 1 Maximum Thresholds" are as follows: (a) Revenues equal to at least $18 million (the "Revenue Maximum Threshold", and (b) EBITDA of at least $1.3 million ("EBITDA Maximum Threshold").

If the Company meets both of the Year 1 Maximum Thresholds, Purchaser shall pay the amounts set forth below within three and one-half (3½) months following the end of Year 1:

| Year 1 Revenues | | Year 1 EBITDA | |
|---|---|---|---|
| Maximum Earn-out Payment to Seller | $ 125,000 | Maximum Earn-out Payment to Seller | $ 125,000 |
| Maximum Earn-out to Bonus Pool | $ 500,000 | Maximum Earn-out to Bonus Pool | $ 500,000 |
| Maximum Revenue Threshold Triggering Payment | $ 18,000,000 | Maximum EBITDA Threshold Triggering Payment | $ 1,300,000 |

If the Company achieves both of the Year 1 Minimum Thresholds but does not achieve either or both of the Year 1 Maximum Thresholds, then the Year 1 Earn-Out Payment shall be reduced according to the following schedule:

| Year 1 Revenues | | | | Year 1 EBITDA | | | |
|---|---|---|---|---|---|---|---|
| Percentage Of Maximum Threshold | Percentage of Earn-Out Payment | Amount Payable to Seller | Amount Payable to Bonus Pool | Percentage Of Maximum Threshold | Percentage of Earn-Out Payment | Amount Payable to Seller | Amount Payable to Bonus Pool |
| 79% | 0.00% | $ 0 | $ 0 | 79% | 0.00% | $ 0 | $ 0 |
| 80% to 89% | 70.00% | $ 87,500 | $ 350,000 | 80% to 89% | 70.00% | $ 87,500 | $ 350,000 |
| 90% to 99% | 85.00% | $ 106,250 | $ 425,000 | 90% to 99% | 85.00% | $ 106,250 | $ 425,000 |
| 100% or more | 100.00% | $ 125,000 | $ 500,000 | 100% or more | 100.00% | $ 125,000 | $ 500,000 |

For the avoidance of doubt, if the Company achieves the Revenue Threshold at one level and the EBITDA Threshold at a different level, the Year 1 Earn-Out Payment will be the sum of the amounts payable based on the two different thresholds achieved. For example, if Revenues for Year 1 exceed $18 million but the Company's EBITDA for Year 1 is only $1.04 million (or 80%), then the Year 1 Earn-Out Payment will be equal $1,062,500 (or the sum of $625,000 based on achievement of the Revenue Threshold and $437,500 based on achievement of the EBITDA Threshold).

(b) **Year 2 Earn-Out Payment**. The maximum Earn-Out Payment that may be earned for Year 2 is $1,250,000.00, which shall be allocated (a) $250,000.00 to Seller, and (b) 1,000,000.00 to the Bonus Pool (up to $500,000 of which shall be payable to Fahad Syed). No Earn-Out Payments for Year 2 will be payable unless the Company achieves both of the Revenue Minimum Threshold and the EBITDA Minimum Threshold ("Year 2 Minimum Thresholds"). "Year 2 Maximum Thresholds" are as follows: (a) Revenues equal to at least $18 million (the "Year 2 Revenue Maximum Threshold," and (b) EBITDA of at least $1.5 million ("Year 2 EBITDA Maximum Threshold").

If the Company meets both of the Year 2 Maximum Thresholds, Purchaser shall pay the amounts set forth below within three and one-half (3½) months following the end of Year 2:

| Year 2 Revenues | | Year 2 EBITDA | |
|---|---|---|---|
| Maximum Earn-out Payment to Seller | $ 125,000 | Maximum Earn-out Payment to Seller | $ 125,000 |
| Maximum Earn-out to Bonus Pool | $ 500,000 | Maximum Earn-out to Bonus Pool | $ 500,000 |
| Maximum Revenue Threshold Triggering Payment | $ 18,000,000 | Maximum EBITDA Threshold Triggering Payment | $ 1,500,000 |

If the Company achieves both of the Year 2 Minimum Thresholds but does not achieve either or both of the Year 2 Maximum Thresholds, then the Year 2 Earn-Out Payment shall be reduced according to the following schedule:

| Year 2 Revenues | | | | Year 2 EBITDA | | | |
|---|---|---|---|---|---|---|---|
| Percentage Of Maximum Threshold | Percentage of Earn-Out Payment | Amount Payable to Seller | Amount Payable to Bonus Pool | Percentage Of Maximum Threshold | Percentage of Earn-Out Payment | Amount Payable to Seller | Amount Payable to Bonus Pool |
| 79% | 0.00% | $ 0 | $ 0 | 79% | 0.00% | $ 0 | $ 0 |
| 80% to 89% | 70.00% | $ 87,500 | $ 350,000 | 80% to 89% | 70.00% | $ 87,500 | $ 350,000 |
| 90% to 99% | 85.00% | $ 106,250 | $ 425,000 | 90% to 99% | 85.00% | $ 106,250 | $ 425,000 |
| 100% or more | 100.00% | $ 125,000 | $ 500,000 | 100% or more | 100.00% | $ 125,000 | $ 500,000 |

For the avoidance of doubt, if the Company achieves the Revenue Threshold at one level and the EBITDA Threshold at a different level, the Year 2 Earn-Out Payment will be the sum of the amounts payable based on the two different thresholds achieved. For example, if Revenues for Year 2 exceed $18 million but the Company's EBITDA for Year 2 is only $1.35 million (or 90%), then the Year 2 Earn-Out Payment will be equal $1,156,250 (or the sum of $625,000 based on achievement of the Revenue Threshold and $531,250 based on achievement of the EBITDA Threshold).

(c) **Payment of Earn-Out Amounts**. Provided the Company has furnished satisfactory proof to Purchaser of its achievement of the Revenue Thresholds and EBIDTA Thresholds for Year 1 and Year 2, respectively, Purchaser shall make the applicable Year 1 Earn-Out Payment within three and one-half (3½) months after the end of Year 1, and the applicable Year 2 Earn-Out Payment within three and one-half (3½) months after the end of Year 2. The Earn-Out Payments allocable to the Bonus Pool shall be made to the Employees pursuant to the Incentive Plan as set forth in Section 3.2 below.

(d) **Audit Right of Purchaser**. Purchaser shall have the right to request an audit by an independent third party with respect to the Company's achievement of the Revenue Threshold and EBITDA Threshold for Year 1 and/or Year 2 by delivering written notice of such audit election to the Company's Chief Financial Officer anytime within a ninety (90) day period following the end of Year 1 or Year 2. The Company agrees that it shall direct its employees to cooperate with the auditors and make available such financial information as shall be reasonably requested by the auditors. If such audit reveals the Company failed to achieve either the reported Revenue Threshold or EBITDA Threshold for the audited year and, therefore, Purchaser made an Earn-Out Payment that was greater than it should have been, Seller agrees that it will return any such over-payment to Purchaser within five (5) days of its receipt of the results of the audit and Seller further agrees to pay the reasonable costs incurred by Purchaser to conduct such audit. If the audit reveals the Company achieved a higher Revenue Threshold or EBITDA Threshold for the audited year than was reported and, therefore, Purchaser made an Earn-Out Payment that was less than it should have been, Purchaser agrees that it will make an additional Earn-Out Payment to Seller and/or the Bonus Pool based on results of the audit within ten (10) days of its receipt of the results of the audit and Purchaser shall bear the costs of the audit.

3.2 **Incentive Plan**. Purchaser agrees that the Company will adopt an incentive compensation plan (the "Incentive Plan") in the form attached hereto as Exhibit E, pursuant to which the Employees of the Company will be eligible to receive the Bonus Pool and other performance based compensation as detailed therein. All payments made to employees from the Bonus Pool will be subject to the terms and conditions of the Incentive Plan. Allocations of amounts from the Incentive Plan shall be subject to Purchaser's prior written consent and payment of such amounts to Employees shall be subject to withholding by the Company for all applicable federal and state payroll taxes due thereon.

## SECTION 4
## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

In this Agreement, any reference to any event, change, condition or effect being "material" with respect to any entity or group of entities means any material event, change, condition or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of such entity or group of entities. In this Agreement, any reference to a "Material Adverse Effect" with respect to any entity or group of entities means any event, change or effect that, when taken individually or together with all other adverse changes and effects, is or is reasonably likely to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, operations, results of or prospects of such entity and its subsidiaries, taken as a whole, or to prevent or materially delay consummation of the transactions contemplated under this Agreement or otherwise to prevent such entity and its subsidiaries from performing their obligations under this Agreement.

In this Agreement, any reference to "knowledge" means an individual will be deemed to have knowledge of a particular fact or other matter if: (i) that individual is actually aware of that fact or matter; or (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonable comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. A party (that is not an individual) will be deemed to have knowledge of a particular fact or other matter if any individual who is serving as a director, officer, executive or manager, partner, executor or trustee of that party (or in any similar capacity) has, or at any time had, knowledge of that fact or other matter (as set forth in (i) and (ii) of this definition), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that party or individual.

A Company Disclosure Schedule, attached as Schedule 2 (the "Company Disclosure Schedule"), shall be delivered to Purchaser on the Effective Date of this Agreement and in connection with the Closing. Except as set forth on the Company Disclosure Schedule delivered to Purchaser as of the Effective Date and as of the Closing Date, respectively, each of the Company and Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing Date, as applicable, as follows**:**

4.1 **Organization, Standing and Power; Subsidiaries**. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey. The Company has the requisite corporate power and authority and all necessary government approvals to own, lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted, except where the failure to have such power, authority and governmental approvals would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that would not, individually or in the aggregate, have a Material Adverse Effect on the Company. Except as set forth in Section 4.1 of the Company Disclosure Schedule, the Company has no subsidiaries. Other than the transactions contemplated by the Transaction Agreements, there are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock of the Company, or otherwise obligating the Company to issue, transfer, sell, purchase, redeem or otherwise acquire any such securities. Except as set forth in Section 4.1 of the Company Disclosure Schedule, the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity.

4.2 **Authorization.** All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of the Company hereunder have been taken or will be taken prior to the Closing. This Agreement, when executed and delivered by the Company shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

4.3 **Certificate of Incorporation and Bylaws**. The Company has delivered a true and correct copy of its Certificate of Incorporation and Bylaws or other charter documents, each as amended to date, to Purchaser. The Company is not in violation of any of the provisions of its Certificate of Incorporation or Bylaws or equivalent organizational documents.

4.4 **Capital Structure**. The authorized capital stock of the Company consists of 5,000,000 shares of Common Stock, of which there are issued and outstanding as of the close of business on the date hereof, 3,000,000 shares of Common Stock. There are no other outstanding shares of capital stock or voting securities and no outstanding commitments to issue any shares of capital stock or voting securities of the Company. All outstanding shares of the Company's capital stock are duly authorized, validly issued, fully paid and non-assessable and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof, and are not subject to preemptive rights or rights of first refusal created by statute, the Certificate of Incorporation or Bylaws of the Company or any agreement to which the Company is a party or by which it is bound. All outstanding shares of the Company's Common Stock were issued in compliance with all applicable federal and state securities laws. As of the close of business on the Effective Date, the Company has not reserved, issued or granted any shares of Common Stock for issuance to employees and consultants pursuant to a Company Stock Plan (the "Plan"). Except (i) for the rights created pursuant to this Agreement, (ii) for the Company's right to repurchase any unvested shares under the Plan and (iii) as set forth in this Section 4.4, there are no options, warrants, calls, rights, commitments, agreements or arrangements of any character to which the Company is a party or by which the Company is bound relating to the issued or unissued capital stock of the Company or obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no contracts, commitments or agreements relating to voting, purchase or sale of the Company's capital stock (i) between or among the Company and any of its stockholders and (ii) between or among any of the Company's stockholders. True and complete copies of all agreements and instruments relating to or issued under the Plan have been made available to Purchaser and such agreements and instruments have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments in any case from the form made available to Purchaser.

4.5 **No Conflicts; Required Filings and Consents**.

(a) Neither the execution and delivery of this Agreement by the Company nor the consummation of the transactions contemplated hereby will conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (i) any provision of the Certificate of Incorporation or Bylaws of the Company or any of its subsidiaries, as amended, or (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its properties or assets.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws; and (ii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not have a Material Adverse Effect on the Company and would not prevent, or materially alter or delay any of the transactions contemplated by this Agreement.

**4.6 Financial Statements.**

(a) As of the Effective Date, Section 4.6 of the Company Disclosure Schedule includes a true, correct and complete copy of the Company's audited financial statements for the fiscal year ended December 31, 2006, a draft copy of the Company's audited financial statements for the fiscal year ended December 31, 2007, a draft of its unaudited financial statements (balance sheet, statement of operations and statement of cash flows) on a consolidated basis as of September 30, 2008, and a draft of the Company's unaudited financial statements (balance sheet, statement of operations and statement of cash flows) as of December 31, 2008 (collectively, the "Financial Statements"). Additionally, as of the Closing Date, the Financial Statements set forth on Section 4.6 shall include a true, correct and complete copy of the Company's audited financial statements for the fiscal year ended December 31, 2008 and unaudited financial statements (balance sheet, statement of operations and statement of cash flows) on a consolidated basis as at, and for the three-month period ended March 31, 2009 (the "1Q 2009 Unaudited Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") (except that the unaudited financial statements do not have notes thereto) applied on a consistent basis throughout the periods indicated and with each other. The Financial Statements accurately set out and describe the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP. The 1Q 2009 Unaudited Financial Statements, shall reflect a zero balance in the intercompany accounts payable and accounts receivable between the Company and Seller, and such zero balance in the intercompany accounts payable and accounts receivable will, and does, remain as of the Closing Date.

(b) The Company and Seller hereby represent and warrant to Purchaser that as of the Effective Date, the intercompany accounts payable and accounts receivable between the Company and Seller shall have a zero balance (other than those balances which relate exclusively the amounts utilized by Seller pursuant to the Note that will be adjusted on the Closing Date.)

4.7 **Absence of Undisclosed Liabilities**. Except as set forth in Schedule 4.7, the Company has no material obligations or liabilities of any nature (matured or unmatured, fixed or contingent) other than (i) those set forth or adequately provided for in the Balance Sheet for the period ended December 31, 2008 (the "Company Balance Sheet"), (ii) those incurred in the ordinary course of business and not required to be set forth in the Company Balance Sheet under GAAP, (iii) those incurred in the ordinary course of business since the Company Balance Sheet Date and consistent with past practice, and (iv) those incurred for professional services in connection with the execution of this Agreement.

4.8 **Absence of Certain Changes**. Except as set forth in Section 4.8 of the Company Disclosure Schedule, since December 31, 2008 (the "Company Balance Sheet Date") there has not been, occurred or arisen any:

(a) transaction by the Company, other than transactions in connection with elimination of intercompany accounts, except in the ordinary course of business as conducted on that date and consistent with past practice;

(b) amendments or changes to the Certificate of Incorporation or Bylaws of the Company other than as contemplated by this Agreement;

(c) capital expenditure or commitment by the Company in any individual amount exceeding $10,000.00 or in the aggregate, exceeding $50,000.00;

(d) destruction of, damage to, or loss of any assets (including, without limitation, intangible assets), business or customer of the Company (whether or not covered by insurance) which would constitute a Material Adverse Effect;

(e) labor trouble or claim of wrongful discharge or other unlawful labor practice or action;

(f) change in accounting methods or practices (including any change in depreciation or amortization policies or rates, any change in policies in making or reversing accruals) by the Company;

(g) revaluation by the Company of any of its assets;

(h) declaration, setting aside, or payment of a dividend or other distribution in respect to the capital stock of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any of its capital stock, except repurchases of the Company Common Stock from terminated Company employees or consultants at the original per share purchase price of such shares;

(i) increase in the salary or other compensation payable or to become payable by the Company to any officers, directors, employees or consultants of the Company, except in the ordinary course of business consistent with past practice, or the declaration, payment, or commitment or obligation of any kind for the payment by the Company of a bonus or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement, or other than as set forth in Section 4.16 below, the establishment of any bonus, insurance, deferred compensation, pension, retirement, profit sharing, stock option (including without limitation, the granting of stock options, stock appreciation rights, performance awards), stock purchase or other employee benefit plan;

(j) sale, lease, license or other disposition of any of the assets or properties of the Company, except in the ordinary course of business and not in excess of $10,000.00, in the aggregate;

(k) termination or material amendment of any material contract, agreement or license (including any distribution agreement) to which the Company is a party or by which it is bound;

(l) loan by the Company to any person or entity, or guaranty by the Company of any loan, except for (i) travel or similar advances made to employees in connection with their employment duties in the ordinary course of business, consistent with past practice and (ii) trade payables not in excess of $50,000.00 in the aggregate and in the ordinary course of business, consistent with past practice;

(m) waiver or release of any right or claim of the Company, except for intercompany balances and doubtful allowances, including any write-off or other compromise of any account receivable of the Company, in excess of $50,000.00 in the aggregate;

(n) commencement or notice or threat of commencement of any lawsuit or proceeding against or, to the Company's or the Company's officers' or directors' knowledge, investigation of the Company or its affairs;

(o) to the Company's knowledge, notice of any claim of ownership by a third party of the Company's Intellectual Property (as defined in Section 4.13 below) or, to the Company's knowledge, of infringement by the Company of any third party's Intellectual Property rights;

(p) issuance or sale by the Company of any of its shares of capital stock, or securities exchangeable, convertible or exercisable therefor, or of any other of its securities, other than as contemplated by the Transaction Agreements;

(q) material changes in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(r) to the Company's knowledge, any event or condition of any character that has or could reasonably be expected to have a Material Adverse Effect on the Company; or

(s) agreement by the Company, or any of its officers or employees on its behalf to do any of the things described in the preceding clauses (a) through (r) (other than negotiations with Purchaser and its representatives regarding the transactions contemplated by this Agreement).

4.9 **Litigation**. Except as set forth on Schedule 4.9, there is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or, to the Company's knowledge, threatened against the Company or any of its properties or any of its officers or directors (in their capacities as such) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Company. There is no judgment, decree or order against the Company or, to the Company's knowledge, any of its directors or officers (in their capacities as such), that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement, or that could reasonably be expected to have a Material Adverse Effect on the Company. All litigation to which the Company is a party (or, to the knowledge of the Company, threatened to become a party) is disclosed in the Company Disclosure Schedule.

4.10 **Restrictions on Business Activities**. There is no agreement, judgment, injunction, order or decree binding upon the Company which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current or future business practice of the Company, any acquisition of property by the Company or the overall conduct of business by the Company as currently conducted or as proposed to be conducted by the Company. The Company has not entered into any agreement under which it is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

4.11 **Permits; Company Products; Regulation**.

(a) The Company is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders necessary for the Company to own, lease and operate its properties or to carry on its business as it is now being conducted (the "Company Authorizations") and no suspension or cancellation of any Company Authorization is pending or, to the Company's knowledge, threatened, except where the failure to have, or the suspension or cancellation of, any Company Authorization would not have a Material Adverse Effect on the Company. The Company is not in conflict with, or in default or violation of, (i) any laws applicable to the Company or by which any property or asset of the Company is bound or affected, (ii) any Company Authorization or (iii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company is a party or by which the Company or any property or asset of the Company is bound or affected, except for any such conflict, default or violation that would not, individually or in the aggregate have a Material Adverse Effect on the Company.

(b) Except as would not have a Material Adverse Effect on the Company, since January 31, 2009, there have been no written notices, citations or decisions by any governmental or regulatory body that any product produced, manufactured, marketed or distributed at any time by the Company or by any agent on behalf of the Company (the "Products") is defective or fails to meet any applicable standards promulgated by any such governmental or regulatory body. To the knowledge of the Company, the Company has complied in all material respects with the laws, regulations, policies, procedures and specifications with respect to the design, manufacture, labeling, testing and inspection of the Products**.** Except as disclosed in Section 4.11 of the Company Disclosure Schedule, since January 31, 2009, there have been no recalls, field notifications or seizures ordered or, to the Company's knowledge, threatened by any such governmental or regulatory body with respect to any of the Products.

(c) The Company has obtained, in all countries where either the Company or any agent of the Company is marketing or has marketed the Company's Products, all applicable licenses, registrations, approvals, clearances and authorizations required by local, state or federal agencies in such countries regulating the safety, effectiveness and market clearance of the Products currently or previously marketed by the Company or its agents in such countries, except for any such failures as would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company has identified and made available for examination by Purchaser all information relating to regulation of its Products, including licenses, registrations, approvals, permits, device listing, inspections, the Company's recalls and product actions, audits and the Company's ongoing field tests. The Company has identified in writing to Purchaser all international locations where regulatory information and documents are kept.

4.12 **Title to Property**.

(a) The Company has good and marketable title to all of its properties, interests in properties and assets, real and personal, reflected in the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties, interests in properties and assets sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business), all as set forth on the schedule of assets listed in Section 4.12 of the Company Disclosure Schedule, or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (i) the lien of current taxes not yet due and payable, (ii) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) liens securing debt which is reflected on the Company Balance Sheet. The plants, property and equipment of the Company that are used in the operations of its business are in good operating condition and repair. All properties used in the operations of the Company are reflected in the Company Balance Sheet to the extent GAAP requires the same to be reflected. Section 4.12 of the Company Disclosure Schedule sets forth a true, correct and complete list of all real property owned or leased by the Company, the name of the lessor, the date of the lease and each amendment thereto and the aggregate annual rental and other fees payable under such lease. Such leases are in good standing, are valid and effective in accordance with their respective terms, and there is not under any such leases any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default).

(b) Section 4.12 of the Company Disclosure Schedule also sets forth a true, correct and complete list of all equipment (the "Equipment") owned or leased by the Company, and such Equipment is, taken as a whole, (i) adequate for the conduct of the Company's business, consistent with its past practice and (ii) in good operating condition (except for ordinary wear and tear).

4.13 **Intellectual Property**.

(a) The Company owns, or is licensed or otherwise possesses legally enforceable rights to use all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, copyrights, and any applications for any of the foregoing, net lists, schematics, industrial models, inventions, technology, know-how, trade secrets, inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material ("Intellectual Property") that are used or proposed to be used in the business of the Company as currently conducted or as proposed to be conducted by the Company, except to the extent that the failure to have such rights has not had and could not reasonably be expected to have a Material Adverse Effect on the Company.

(b) Section 4.13 of the Company Disclosure Schedule lists (i) all patents and patent applications and all registered and unregistered trademarks, trade names and service marks, registered and unregistered copyrights, and mask work rights, included in the Intellectual Property, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in which any application for such issuance and registration has been filed, (ii) all licenses, sublicenses and other agreements to which the Company is a party and pursuant to which any person is authorized to use any Intellectual Property, and (iii) all licenses, sublicenses and other agreements as to which the Company is a party and pursuant to which the Company is authorized to use any third party patents, trademarks or copyrights, including software ("Third Party Intellectual Property Rights") which are incorporated in, are, or form a part of any products of the Company that are, individually or in the aggregate, material to the business of the Company. The Company is not in violation of any license, sublicense or agreement described in Section 4.13 of the Company Disclosure Schedule. The execution and delivery of this Agreement by the Company and the consummation of the transactions contemplated hereby, will neither cause the Company to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth in Section 4.13 of the Company Disclosure Schedule, the Company is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any liens), the Intellectual Property, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which Intellectual Property is being used.

(c) To the Company's knowledge, there is no material unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property rights of the Company, any trade secret material to the Company or any Intellectual Property right of any third party to the extent licensed by or through the Company, by any third party, including any employee or former employee of the Company. The Company has not entered into any agreement to indemnify any other person against any charge of infringement of any Intellectual Property, other than indemnification provisions contained in purchase orders arising in the ordinary course of business.

(d) The Company is not or will not be as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any license, sublicense or other agreement relating to the Intellectual Property or Third Party Intellectual Property Rights, the breach of which would have a Material Adverse Effect on the Company.

(e) To the Company's knowledge, all patents, registered trademarks, service marks and copyrights held by the Company are valid and existing and there is no assertion or claim (or basis therefor) challenging the validity of any Intellectual Property of the Company. The Company has not been sued in any suit, action or proceeding which involves a claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary right of any third party. Neither the conduct of the business of the Company as currently conducted or contemplated nor the manufacture, sale, licensing or use of any of the products of the Company as now manufactured, sold or licensed or used, nor the use in any way of the Intellectual Property in the manufacture, use, sale or licensing by the Company of any products currently proposed, infringes on or will infringe or conflict with, in any way, any license, trademark, trademark right, trade name, trade name right, patent, patent right, industrial model, invention, service mark or copyright of any third party that, individually or in the aggregate, is reasonably likely to have a Material Adverse Effect on the Company. All registered trademarks, service marks and copyrights held by the Company are valid and subsisting. To the Company's knowledge, no third party is challenging the ownership by the Company, or validity or effectiveness of, any of the Intellectual Property. The Company has not brought any action, suit or proceeding for infringement of Intellectual Property or breach of any license or agreement involving Intellectual Property against any third party. There is no pending, or to the best of the Company's knowledge, threatened interference, re-examinations, oppositions or nullities involving any patents, patent rights or applications therefor of the Company, except such as may have been commenced by the Company. There is no breach or violation of or threatened or actual loss of rights under any licenses to which the Company is a party.

(f) The Company has secured valid written assignments from all consultants and employees who contributed to the creation or development of Intellectual Property of the rights to such contributions that the Company does not already own by operation of law.

(g) The Company has taken all necessary and appropriate steps to protect and preserve the confidentiality of all Intellectual Property not otherwise protected by patents, patent applications or copyright ("Confidential Information"). The Company has a policy requiring each of its employees and contractors to execute proprietary information and confidentiality agreements substantially in the Company's standard forms and all current and former employees and contractors of the Company have executed such an agreement. All use, disclosure or appropriation of Confidential Information owned by the Company by or to a third party has been pursuant to the terms of a written agreement between the Company and such third party. All use, disclosure or appropriation of Confidential Information not owned by the Company has been pursuant to the terms of a written agreement between the Company and the owner of such Confidential Information, or is otherwise lawful.

4.14 **Environmental Matters**.

(a) The following terms shall be defined as follows:

(i) **"Environmental and Safety Laws"** shall mean any federal, state or local laws, ordinances, codes, regulations, rules, policies and orders, as each may be amended from time to time, that are intended to assure the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants; which regulate the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Materials (as defined below) or materials containing Hazardous Materials; or which are intended to assure the protection, safety and good health of employees, workers or other persons, including the public.

(ii) **"Hazardous Materials"** shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive substance or material, including without limitation, those substances, materials and wastes defined in or regulated under any Environmental and Safety Laws; petroleum or petroleum products including crude oil or any fractions thereof; natural gas, synthetic gas, or any mixtures thereof; radon; asbestos; or any other pollutant or contaminant

(iii) **"Property"** shall mean all real property leased or owned by the Company either currently or in the past.

(iv) **"Facilities"** shall mean all buildings and improvements on the Property of the Company.

(b) The Company represents and warrants as follows: (i) no methylene chloride or asbestos is contained in or has been used at or released from the Facilities; (ii) all Hazardous Materials and wastes have been disposed of in accordance with all Environmental and Safety Laws; and (iii) the Company has received no notice (verbal or written) of any noncompliance of the Facilities or of its past or present operations with Environmental and Safety Laws; (iv) no notices, administrative actions or suits are pending or threatened relating to Hazardous Materials or a violation of any Environmental and Safety Laws; (v) the Company is not a potentially responsible party under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or state analog statute, arising out of events occurring prior to the Closing; (vi) there has not been in the past, and there is not now, any contamination, disposal, spilling, dumping, incineration, discharge, storage, treatment or handling of Hazardous Materials on, under or migrating to or from the Facilities or Property (including without limitation, soils and surface and ground waters); (vii) there have not been in the past, and are not now, any underground tanks or underground improvements at, on or under the Property including without limitation, treatment or storage tanks, sumps, or water, gas or oil wells; (viii) there are no polychlorinated biphenyls ("PCBs") deposited, stored, disposed of or located on the Property or Facilities or any equipment on the Property containing PCBs at levels in excess of 50 parts per million; (ix) there is no formaldehyde on the Property or in the Facilities, nor any insulating material containing urea formaldehyde in the Facilities; (x) the Facilities and the Company's uses and activities therein have at all times complied with all Environmental and Safety Laws; (xi) the Company has all the permits and licenses required to be issued and is in full compliance with the terms and conditions of those permits; and (xii) the Company is not liable for any off-site contamination under any Environmental and Safety Laws.

4.15 **Taxes**.

(a) For purposes of this Section 4.15 and other provisions of this Agreement relating to Taxes, the following definitions shall apply:

(i) The term "Taxes" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, (A) imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including but not limited to, federal, state and foreign income taxes), payroll and employee withholding taxes, unemployment insurance contributions, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, withholding taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, and other Tax of any kind whatsoever, which are required to be paid, withheld or collected, in an aggregate amount in excess of $10,000, (B) any liability for the payment of amounts referred to in (A) as a result of being a member of any affiliated, consolidated, combined or unitary group, or (C) any liability for amounts referred to in (A) or (B) as a result of any obligations to indemnify another person.

(ii) The term "Returns" shall mean all reports, estimates, declarations of estimated tax, information statements and returns required to be filed in connection with any Taxes, including information returns with respect to backup withholding and other payments to third parties.

(b) Except as set forth on Schedule 4.15, all Returns required to be filed by or on behalf of the Company have been duly filed on a timely basis and such Returns are true, complete and correct. All Taxes shown to be payable on such Returns or on subsequent assessments with respect thereto, and all payments of estimated Taxes required to be made by or on behalf of the Company under Section 6655 of the Code or comparable provisions of state, local or foreign law, have been paid in full on a timely basis, and no other Taxes are payable by the Company with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns). The Company has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of the Company with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that the Company is contesting in good faith through appropriate proceedings. Except as set forth on Schedule 4.15, the Company has no subsidiaries and has not at any time been a member of an affiliated group of corporations filing consolidated, combined or unitary income or franchise tax returns for a period for which the statute of limitations for any Tax potentially applicable as a result of such membership has not expired.

(c) The amount of the Company's liabilities for unpaid Taxes for all periods through the date of the Financial Statements does not, in the aggregate, exceed the amount of the current liability accruals for Taxes reflected on the Financial Statements, and the Financial Statements properly accrue in accordance with GAAP all liabilities for Taxes of the Company payable after the date of the Financial Statements attributable to transactions and events occurring prior to such date. No liability for Taxes of the Company has been incurred or material amount of taxable income has been realized (or prior to and including the Closing will be incurred or realized) since such date other than in the ordinary course of business.

(d) Purchaser has been furnished by the Company with true and complete copies of (i) all relevant portions of income tax audit reports, statements of deficiencies, closing or other agreements received by or on behalf of the Company relating to Taxes, and (ii) all federal, state and foreign income or franchise tax returns and state sales and use tax Returns for or including the Company for all periods since six (6) full years preceding the date of this Agreement.

(e) No audit of the Returns of or including the Company by a government or taxing authority is in process, threatened or, to the Company's knowledge, pending (either in writing or orally, formally or informally). No deficiencies exist or have been asserted (either in writing or orally, formally or informally) or are expected to be asserted with respect to Taxes of the Company, and the Company has not received notice (either in writing or orally, formally or informally) nor does it expect to receive notice that it has not filed a Return or paid Taxes required to be filed or paid. The Company is not a party to any action or proceeding for assessment or collection of Taxes, nor, to the Company's knowledge, has such event been asserted or threatened (either in writing or orally, formally or informally) against the Company, or any of its assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of the Company. The Company has disclosed on its federal and state income and franchise tax returns all positions taken therein that could give rise to a substantial understatement penalty within the meaning of Code Section 6662 or comparable provisions of applicable state tax laws.

(f) The Company is not (nor has it ever been) a party to any tax sharing agreement. Since April 16, 1997, the Company has not been a distributing corporation or a controlled corporation in a transaction described in Section 355(a) of the Code.

(g) The Company is not, nor has it been, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The Company is not a "consenting corporation" under Section 341(f) of the Code. The Company has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to the Company pursuant to Section 280G or 162(m) of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. The Company has not agreed to, nor is it required to make, any adjustment under Code Section 481(a) by reason of, a change in accounting method, and the Company will not otherwise have any income reportable for a period ending after the Closing attributable to a transaction or other event (e.g., an installment sale) occurring prior to the Closing with respect to which the Company received the economic benefit prior to the Closing. The Company is not, nor has it been, a "reporting corporation" subject to the information reporting and record maintenance requirements of Section 6038A and the regulations thereunder.

(h) The Company Disclosure Schedule contains accurate and complete information regarding the Company's net operating losses for federal and each state tax purposes. The Company has no net operating losses or credit carryovers or other tax attributes currently subject to limitation under Sections 382, 383, or 384 of the Code.

(i) The Company shall not have any liability for Taxes of any person other than the Company under (a) Treas. Reg. Section 1502-6 (or any similar provision of state, local, or foreign law), (b) as a transferee or successor, (c) by contract, or (d) otherwise.

(j) With respect to each option and share of restricted stock, the Company and the Stockholders warrant and represent that each such option has been granted with an exercise price no lower than "fair market value" (determined in accordance with Treas. Reg. Section 1.409A-1(b)(vi)) as of the grant date and that each such grant does not provide for a deferral of compensation under Code section 409A. Each Company Employee Plan (as defined in Section 8(p) hereof) that is a "nonqualified deferred compensation plan" (as defined in Code Section 409A(d)(1)) has been operated since January 1, 2005, in good faith compliance with Code Section 409A and the rules and regulations issued thereunder. No Company Employee Plan that is a "nonqualified deferred compensation plan" has been materially modified (as determined under Treas. Reg. Section 1.409A-6) after October 3, 2004. The Company is not a party to, and is not otherwise obligated under, any Contract, plan or arrangement that provides for the gross-up of the Tax imposed by Section 409A(a)(1)(B) of the Code.

4.16 **Employee Benefit Plans**.

(a) Schedule 4.16 lists, with respect to the Company and any trade or business (whether or not incorporated) which is treated as a single employer with the Company (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), (ii) each loan to a non-officer employee in excess of $10,000, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section 129), life insurance or accident insurance plans, programs or arrangements, (iii) all contracts and agreements relating to employment that provide for annual compensation in excess of $100,000 and all severance agreements, with any of the directors, officers or employees of the Company (other than, in each case, any such contract or agreement that is terminable by the Company at will or without penalty or other adverse consequence), (iv) all bonus, pension, profit sharing, savings, deferred compensation or incentive plans, programs or arrangements, (v) other fringe or employee benefit plans, programs or arrangements that apply to senior management of the Company and that do not generally apply to all employees, and (vi) any current or former employment or executive compensation or severance agreements, written or otherwise, as to which unsatisfied obligations of the Company of greater than $50,000 remain for the benefit of, or relating to, any present or former employee, consultant or director of the Company (together, the "Company Employee Plans").

(b) The Company has furnished to Purchaser a copy of each of the Company Employee Plans and related plan documents (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents, and, to the extent still in its possession, any material employee communications relating thereto) and has, with respect to each Company Employee Plan which is subject to ERISA reporting requirements, provided copies of the Form 5500 reports filed for the last three plan years. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service an opinion letter or favorable determination letter as to its initial qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation; may rely on an opinion letter issued to a prototype plan sponsor with respect to a standardized plan adopted by the Company in accordance with the requirements for such reliance; or has applied to the Internal Revenue Service for such a determination letter (or has time remaining to apply for such a determination letter) prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination with respect to all periods since the date of adoption of such Company Employee Plan. The Company has also furnished Purchaser with the most recent Internal Revenue Service determination letter issued with respect to each such the Company Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any the Company Employee Plan subject to Code Section 401(a).

(c) Except as set forth in Section 4.16 of the Company Disclosure Schedule, (i) none of Company Employee Plans promises or provides retiree medical or other retiree welfare or life insurance benefits to any person; (ii) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, and not exempt under Section 408 of ERISA or Section 4975 of the Code, with respect to any Company Employee Plan, which could reasonably be expected to have, in the aggregate, a Material Adverse Effect; (iii) each Company Employee Plan has been administered in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), except as would not have, in the aggregate, a Material Adverse Effect, and the Company or ERISA Affiliate have performed all obligations required to be performed by them under, are not in any material respect in default, under or violation of, and have no knowledge of any material default or violation by any other party to, any of the Company Employee Plans; (iv) neither the Company nor any ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980D of the Code or Title I of ERISA with respect to any of the Company Employee Plans; (v) all material contributions required to be made by the Company or any ERISA Affiliate to any Company Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Company Employee Plan for the current plan years; (vi) with respect to each Company Employee Plan, no "reportable event" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 or ERISA has occurred; (vii) no Company Employee Plan is covered by, and neither the Company nor any ERISA Affiliate has incurred or expects to incur any direct or indirect liability under, arising out of or by operation of Title IV of ERISA in connection with the termination of, or an employee's withdrawal from, any Company Employee Plan or other retirement plan or arrangement, and no fact or event exists that could give rise to any such liability, or under Section 412 of the Code; and (viii) no compensation paid or payable to any employee of the Company has been, or will be, non-deductible by reason of application of Section 162(m) or 280G of the Code. With respect to each Company Employee Plan subject to ERISA as either an employee pension plan within the meaning of Section 3(2) of ERISA or an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, the Company has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such the Company Employee Plan. No suit, administrative proceeding, action or other litigation has been brought, or to the best knowledge of the Company is threatened, against or with respect to any such the Company Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor. Neither the Company nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any "multiemployer plan" as defined in Section 3(37) of ERISA.

(d) With respect to each Company Employee Plan, the Company has complied with (i) the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the regulations thereunder or any similar applicable state law, (ii) the applicable requirements of the Health Insurance Portability Amendments Act ("HIPAA") and the regulations thereunder and (iii) the applicable requirements of the Family Medical Leave Act of 1993 and the regulations thereunder or any similar applicable state law, except to the extent that failure to comply would not, in the aggregate, have a Material Adverse Effect.

(e) Except as set forth on Schedule 4.16(e), the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee or other service provider of the Company or any ERISA Affiliate to severance benefits or any other payment (including, without limitation, unemployment compensation, golden parachute or bonus), except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting of any such benefits, or increase the amount of compensation due any such employee or service provider.

(f) There has been no amendment to, written interpretation or announcement (whether or not written) by the Company or any ERISA Affiliate relating to, or change in participation or coverage under, any the Company Employee Plan which would materially increase the expense of maintaining such Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in the Company's financial statements.

4.17 **Effect on Other Certain Agreements**. Except as set forth on Schedule 4.17, neither the execution and delivery of this Agreement or the Transaction Agreements nor the consummation of the transactions contemplated hereby or thereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director or employee of the Company, (ii) materially increase any benefits otherwise payable by the Company or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

4.18 **Employee Matters**.

(a) Except as set forth on Schedule 4.18, the Company is in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and is not engaged in any unfair labor practice. There are no pending claims against the Company under any workers compensation plan or policy or for long term disability. The Company does not have any material obligations under COBRA or any similar state law with respect to any former employees or qualifying beneficiaries thereunder. There are no controversies pending or, to the Company's knowledge, threatened, between the Company and any of its employees or former employees, which controversies have or could reasonably be expected to have a Material Adverse Effect on the Company. The Company is not a party to any collective bargaining agreement or other labor unions contract nor does the Company know of any activities or proceedings of any labor union or organize any such employees. The Company has not incurred any liability under, and has complied in all respects with, the Worker Adjustment Retraining Notification Act (the "WARN Act"), and no fact or event exists that could give rise to liability under the WARN Act. Section 4.18 of the Company Disclosure Schedule contains a list of all employees who are currently on a leave of absence (whether paid or unpaid), the reasons therefor, the expected return date, and whether reemployment of such employee is guaranteed by contract or statute, and a list of all employees who have requested a leave of absence to commence at any time after the date of this Agreement, the reason therefor, the expected length of such leave, and whether reemployment of such employee is guaranteed by contract or statute.

(b) The Company is in compliance with all federal, state and local laws governing the employment and sponsorship of foreign nationals employed by the Company and is not required to make any filing with or give any notice to, or to obtain any consent from, any governmental body in connection with employment by the Company of any employee who is a foreign national. There is no pending legal proceeding, and no governmental agency has threatened to commence any legal proceeding, against the Company or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with the employment by the Company of any employee who is a foreign national. There is no order, writ, injunction or decree which has been entered against the Company preventing or delaying the employment by the Company of any employee who is a foreign national.

4.19 **Material Contracts**.

(a) Section 4.19 of the Company Disclosure Schedule contains a list of all contracts and agreements to which the Company is a party and that are material to the business, results of operations, or condition (financial or otherwise), of the Company (such contracts, agreements and arrangements as are required to be set forth in Section 4.19 of the Company Disclosure Schedule being referred to herein collectively as the "Material Contracts"). "Material Contracts" shall include, without limitation, the following and shall be categorized in the Company Disclosure Schedule as follows:

(i) each contract and agreement (other than routine purchase orders and pricing quotes in the ordinary course of business covering a period of less than one year) for the purchase of inventory, spare parts, other materials or personal property with any supplier or for the furnishing of services to the Company under the terms of which the Company: (A) paid or otherwise gave consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(ii) each customer contract and agreement (other than routine purchase orders, pricing quotes with open acceptance and other tender bids, in each case, entered into in the ordinary course of business and covering a period of less than one year) to which the Company is a party which (A) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, ((B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(iii) (A) all distributor, manufacturer's representative, broker, franchise, agency and dealer contracts and agreements to which the Company is a party (specifying on a matrix, in the case of distributor agreements, the name of the distributor, product, territory, termination date and exclusivity provisions) and (B) all sales promotion, market research, marketing and advertising contracts and agreements to which the Company is a party which: (1) involved consideration of more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008 or (2) are likely to involve consideration of more than $5,000.00 in the aggregate over the remaining term of the contract;

(iv) all management contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which (A) involved consideration or more than $5,000.00 in the aggregate during the calendar year ended December 31, 2008, (B) is likely to pay or otherwise give consideration of more than $5,000.00 in the aggregate over the remaining term of such contract or (C) cannot be canceled by the Company without penalty or further payment of less than $5,000.00;

(v) all contracts and agreements (excluding routine checking account overdraft agreements involving petty cash amounts) under which the Company has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness or under which the Company has imposed (or may impose) a security interest or lien on any of their respective assets, whether tangible or intangible, to secure indebtedness;

(vi) all contracts and agreements that limit the ability of the Company to compete in any line of business or with any person or in any geographic area or during any period of time, or to solicit any customer or client;

(vii) all contracts and agreements between or among the Company, on the one hand, and any affiliate of the Company, on the other hand:

(viii) all contracts and agreements to which the Company is a party under which it has agreed to supply products to a customer at specified prices, whether directly or through a specific distributor, manufacturer's representative or dealer; and

(ix) all other contracts or agreements (A) which are material to the Company or the conduct of their respective businesses or (B) the absence of which would have a Material Adverse Effect on the Company or (C) which are believed by the Company to be of unique value even though not material to the business of the Company.

(b) Except as would not, individually or in the aggregate, have a Material Adverse Effect on the Company, each Company license and each Material Contract, is a legal, valid and binding agreement, and none of the Company licenses or Material Contracts is in default by its terms or has been canceled by the other party; the Company is not in receipt of any claim of default under any such agreement; and the Company does not anticipate any termination of or change to, or receipt of a proposal with respect to, any such agreement as a result of the transactions contemplated by this Agreement. The Company has furnished Purchaser with true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

4.20 **Interested Party Transactions**. Except as set forth on Schedule 4.20, the Company is not directly or indirectly indebted to any director, officer, employee or agent of the Company (each of the foregoing, an "Interested Party") (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), nor is the Company directly or indirectly indebted to any members of the immediate families of any Interested Party, and no such Interested Parties or members of their immediate families are directly or indirectly indebted to the Company. No Interested Parties have any direct or indirect ownership or financial interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation which competes with the Company except that Interested Parties and members of their families may own stock in (but not exceeding two percent (2%) of the outstanding capital stock of) any publicly traded companies that may compete with the Company. No Interested Party or any members of their immediate families are, directly or indirectly, interested in any material contract with the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

4.21 **Insurance**. The Company has policies of insurance and bonds of the type and in the amounts customarily carried by persons conducting businesses or owning assets similar to those of the Company. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and the Company is otherwise in compliance with the terms of such policies and bonds. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

4.22 **Compliance With Laws**. The Company has complied with, is not in violation of, and has not received any notices of violation with respect to, any federal, state, local or foreign statute, law or regulation with respect to the conduct of its business, or the ownership or operation of its business, except for such violations or failures to comply as could not reasonably be expected to have a Material Adverse Effect on the Company.

4.23 **Minute Books**. The minute books of the Company made available to Purchaser contain a complete summary of all meetings of directors and stockholders or actions by written consent since the time of incorporation of the Company through the date of this Agreement, and reflect all transactions referred to in such minutes accurately in all material respects. The minute books shall remain available for Purchaser from the period beginning on the effective date through the earlier to occur of (i) the Closing or (ii) the Option Termination Date.

4.24 **Complete Copies of Materials**. The Company has delivered or made available true and complete copies of each document which has been requested by Purchaser or its counsel in connection with their legal and accounting review of the Company.

4.25 **Brokers' and Finders' Fees**. The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transaction contemplated hereby.

4.26 **Board Approval**. The Board of Directors of the Company has unanimously approved this Agreement and the Transaction Agreements and the transactions contemplated hereunder and thereunder.

4.27 **Inventory**. The inventories shown on the Financial Statements or thereafter acquired by the Company consist of items of a quantity and quality usable or salable in the ordinary course of business. Since January 31, 2009, the Company has continued to replenish inventories in a normal and customary manner consistent with past practice. The Company has not received written or oral notice that it will experience in the foreseeable future any difficulty in obtaining, in the desired quantity and quality and at a reasonable price and upon reasonable terms and conditions, the raw materials, supplies or component products required for the manufacture, assembly or production of its products. The values at which inventories are carried reflect the inventory valuation policy of the Company, which is consistent with its past practice and in accordance with GAAP applied on a consistent basis. Due provision has been made on the books of the Company in the ordinary course of business consistent with past practice to provide for all slow-moving, obsolete, or unusable inventories at their estimated useful scrap values and such inventory reserves are adequate to provide for such slow-moving, obsolete or unusable inventory and inventory shrinkage.

4.28 **Accounts Receivable**.

(a) The Company has made available to Purchaser a list of all accounts receivable of the Company reflected on the Financial Statements ("Accounts Receivable") along with a range of days elapsed since invoice.

(b) All Accounts Receivable of the Company arose in the ordinary course of business and are carried at values determined in accordance with GAAP consistently applied. No person has any lien on any of such Accounts Receivable and no request or agreement for deduction or discount has been made with respect to any of such Accounts Receivable.

(c) All of the inventories of the Company reflected in the Financial Statements and the Company's books and records on the date hereof were purchased, acquired or produced in the ordinary and regular course of business and in a manner consistent with the Company's regular inventory practices and are set forth on the Company's books and records in accordance with the practices and principles of the Company consistent with the method of treating said items in prior periods. None of the inventory of the Company reflected on the Financial Statements or on the Company's books and records as of the date hereof (in either case net of the reserve therefor) is obsolete, defective or in excess of the needs of the business of the Company reasonably anticipated for the normal operation of the business consistent with past practice and outstanding customer contracts. The presentation of inventory on the Financial Statements conforms to GAAP and such inventory is stated at the lower of cost or net realizable value.

4.29 **Customers and Suppliers**. As of the date hereof, no customer which individually accounted for more than ten percent (10%) of the Company's gross revenues during the twelve (12) month period preceding the date hereof, and no supplier of the Company, has canceled or otherwise terminated, or made any written threat to the Company to cancel or otherwise terminate its relationship with the Company, or has at any time on or after December 31, 2008 decreased materially its services or supplies to the Company in the case of any such supplier, or its usage of the services or products of the Company in the case of such customer, and to the Company's knowledge, no such supplier or customer intends to cancel or otherwise terminate its relationship with the Company or to decrease materially its services or supplies to the Company or its usage of the services or products of the Company, as the case may be. From and after the date hereof, no customer which individually accounted for more than ten percent (10%) of the Company's gross revenues during the twelve (12) month period preceding the Closing, has canceled or otherwise terminated, or made any written threat to the Company to cancel or otherwise terminate, for any reason, including without limitation the consummation of the transactions by this Agreement, its relationship with the Company, and to the Company's knowledge, no such customer intends to cancel or otherwise terminate its relationship with the Company or to decrease materially its usage of the services or products of the Company. The Company has not knowingly breached, so as to provide a benefit to the Company that was not intended by the parties, any agreement with, or engaged in any fraudulent conduct with respect to, any customer or supplier of the Company.

4.30 **Third Party Consents**. Except as set forth on Schedule 4.30, no consent or approval is needed from any third party in order to effect this Agreement or any of the transactions contemplated hereby.

4.31 **No Commitments Regarding Future Products.** The Company has made no sales to customers that are contingent upon providing future enhancements of existing products, to add features not presently available on existing products or to otherwise enhance the performance of its existing products (other than beta or similar arrangements pursuant to which the Company's customers from time to time test or evaluate products). The products the Company has delivered to customers substantially comply with published specifications for such products and the Company has not received material complaints from customers about its products that remain unresolved. Section 4.31 of the Company Disclosure Schedule accurately sets forth a complete list of products in development (exclusive of mere enhancements to and additional features for existing products).

4.32 **Representations Complete**. None of the representations or warranties made by the Company in this Agreement or in any attachment hereto, including the Company Disclosure Schedule, or certificate furnished by the Company pursuant to this Agreement, when all such documents are read together in their entirety, contains or will contain at the Closing any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

## SECTION 5
## REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as of the Effective Date and as of the Closing Date, as applicable, as follows:

5.1 **Power, Authorization and Validity**. Seller has all requisite legal and, to the extent applicable, corporate power, and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved and authorized by all necessary action, including, if applicable, corporate action, by Seller. This Agreement has been duly executed and delivered by Seller and constitutes a valid and binding obligation of the Seller, subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief and equitable remedies. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required by or with respect to Seller in connection with the execution and delivery of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby.

5.2 **Title to Shares**. Seller is the sole owner of the Shares and has, and will have, as of the Closing, good, valid and marketable title to such Shares free and clear of all restrictions, claims, liens, charges, encumbrances and equities whatsoever. Seller represents that it has or will have, as of the Closing, full right, power and authority to sell, transfer and deliver such Shares to Purchaser, and, upon delivery of the certificate or certificates therefor duly endorsed for transfer to Purchaser and Purchaser's payment for and acceptance thereof, will transfer to Purchaser good, valid and marketable title thereto free and clear of any restriction, claim, lien, charge, encumbrance or equity whatsoever. Seller is not party to any voting trust, agreement or arrangement affecting the exercise of the voting rights of the Shares. There is no action, proceeding, claim or, to the Seller's knowledge, investigation against Seller or Seller's assets, properties or, as applicable, any of the Seller's respective officers or directors, pending or, to the Seller's knowledge, threatened, at law or in equity, or before any court, arbitrator or other tribunal, or before any administrative law judge, hearing officer or administrative agency relating to or in any other manner impacting upon the Shares held by Seller.

5.3 **No Violation**. The execution, delivery and performance of this Agreement and the consummation of transactions contemplated hereby do not and will not (with or without notice or lapse of time, or both) result in a termination, breach, impairment or violation of, or constitute a default or result in the creation or imposition of any lien, charge or encumbrance upon any of the Shares under, (a) any instrument, indenture, lease, mortgage or other agreement or contract to which Seller is a party or to which Seller or any of Seller's assets or properties may be subject or (b) any federal, state, local or foreign judgment, writ, decree, order, ordinance, statute, rule or regulation applicable to the Seller or Seller's assets or properties. The consummation of the Purchase and the other transactions contemplated by this Agreement will not require the consent of any third person with respect to the rights, licenses, franchises, leases or agreements of the Seller.

5.4 **Acknowledgment**. Seller hereby acknowledges that it and its legal counsel have read this Agreement and the other documents to be delivered in connection with the consummation of the transactions contemplated hereby and has made an independent examination of the transactions contemplated hereby (including the tax consequences thereof). Seller acknowledges that it has had an opportunity to consult with and has relied solely upon the advice, if any, of Seller's legal counsel, financial advisors, or accountants with respect to the transactions contemplated hereby to the extent Seller has deemed necessary, and has not been advised or directed by Purchaser or their respective legal counsel or other advisors in respect of any such matters and has not relied on any such parties in connection with this Agreement and the transactions contemplated hereby.

5.5 **Board and Stockholder Approval**. The Board of Directors of Seller has unanimously (i) approved this Agreement and the transactions contemplated hereunder, and (ii) determined that the purchase of the Shares by Purchaser is in the best interests of the stockholders of Seller. As of the Effective Date, Seller has obtained a stockholder agreement and irrevocable proxy (the "Proxy"), in form and substance acceptable to Purchaser, from Seller's stockholders holding at least 51% of the outstanding stock (the "Majority Stockholders") of the Seller, evidencing the consent by the Majority Stockholders to the Purchase and related transactions as described in the Definitive Information Statement. As of the Closing Date, (i) the Definitive Information Statement has been reviewed by the Securities and Exchange Commission, (ii) has become effective under the applicable provisions of the Securities Exchange Act of 1934, as amended, (iii) has been delivered to the stockholders of Seller, and (iv) Seller has obtained the requisite consents of its stockholders required by all applicable federal and state laws approving the terms of this Agreement and related transactions described in the Definitive Information Statement.

## SECTION 6
## REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller and the Company as of the Effective Date and as of the Closing Date as follows:

6.1 **Organization, Standing and Power**. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser has the corporate power to own its properties and to carry on its business as now being conducted and as proposed to be conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would have a Material Adverse Effect on Purchaser.

6.2 **Authority**. Purchaser has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes the valid and binding obligation of Purchaser enforceable against the Purchaser in accordance with its terms.

6.3 **No Conflict; Required Filings and Consents**.

(a) The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under (i) any provision of the Certificate of Incorporation or Bylaws of Purchaser, as amended, or (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Purchaser or its properties or assets.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transactions contemplated hereby, except for consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not have a Material Adverse Effect on Purchaser and would not prevent, materially alter or delay any the transactions contemplated by this Agreement.

6.4 **Governmental Authorization**. Purchaser has obtained each federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity that is required for the operation of Purchaser's business ("Purchaser Authorizations"), and all of such Purchaser Authorizations are in full force and effect, except where the failure to obtain or have any of such Purchaser Authorizations could not reasonably be expected to have a Material Adverse Effect on Purchaser.

6.5 **Broker's and Finders' Fees**. Purchaser has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transaction contemplated hereby.

**SECTION 7**
**CONDITIONS TO CLOSING**

7.1 **Conditions to Obligations of Each Party**. The respective obligations under this Agreement of each party hereto shall be subject to the satisfaction on or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by agreement of all the parties:

(a) **Conditions to Obligations of Each Party**. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the transactions contemplated hereby shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the transactions contemplated hereby, which makes the consummation of such transactions illegal.

(b) **Governmental Approval**. Purchaser, Seller and the Company shall have timely obtained from each Governmental Entity all approvals, waivers and consents, if any, necessary for consummation of or in connection with the transactions contemplated hereby.

7.2 **Additional Conditions to Obligations of Seller and the Company**. The obligations of Seller and the Company under this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by Seller and the Company:

(a) **Representations, Warranties and Covenants** (i) Each of the representations and warranties of Purchaser in this Agreement that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of Purchaser in this Agreement that is not so qualified shall be true and correct in all material respects, on and as of the Closing as though such representation or warranty had been made on and as of the Closing (except that those representations and warranties which address matters only as of a particular date shall remain true and correct as of such date), and (ii) Purchaser shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by Purchaser as of the Closing.

(b) **No Material Adverse Changes**. There shall not have occurred any material adverse change in the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of Purchaser and its subsidiaries, taken as a whole.

(c) **Compliance Certificate of Purchaser.** The Company shall have been provided with a certificate executed on behalf of Purchaser by its President and its Chief Financial Officer to the effect that, as of the Closing, each of the conditions set forth in Section 7.2(a) and (b) above has been satisfied with respect to Purchaser.

7.3 **Additional Conditions to the Obligations of Purchaser**. The obligations of Purchaser under this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by Purchaser:

(a) **Representations, Warranties and Covenants**. (i) Each of the representations and warranties of the Company and Seller in this Agreement that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of the Company and Seller in this Agreement that is not so qualified shall be true and correct in all material respects, on and as of the Closing as though such representation or warranty had been made on and as of the Closing (except that those representations and warranties which address matters only as of a particular date shall remain true and correct as of such date), and (ii) the Company and Seller shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by them as of the Closing.

(b) **No Material Adverse Changes**. There shall not have occurred any material adverse change in the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of the Company.

(c) **Certificates of the Company and Seller.**

(i) **Compliance Certificate of the Company**. Purchaser shall have been provided with a certificate executed on behalf of the Company by its Chief Executive Officer and its Chief Financial Officer to the effect that, as of the Closing, each of the conditions set forth in Section 7.3(a) and (b) above has been satisfied.

(ii) **Compliance Certificate of Seller**. Purchaser shall have been provided with a certificate executed on behalf of the Seller by its Chief Executive Officer and its Chief Financial Officer to the effect that, as of the Closing, each of the conditions set forth in Section 7.3(a) and (b) above has been satisfied.

(iii) **Certificate of Chief Financial Officer**. Purchaser shall have been provided with a certificate executed on behalf of by the Company by its Chief Financial Officer certifying that, as of the Closing:

(A) as per the Company's audited financial statements for the fiscal year ended December 31, 2008 (I) the Company's Gross Revenues for the fiscal year ended December 31, 2008 equaled or exceeded $20 million, and (II) the Company's EBITDA for the fiscal year ended December 31, 2008 equaled or exceeded $1.5 million; and

(B) the Company has employed or retained a minimum of 175 employees or consultants working on a full-time basis in support of the operations of the Company.

(iv) **Certificate of Secretary of the Company**. Purchaser shall have been provided with a certificate executed by the Secretary of the Company certifying that, as of the Effective Date and the Closing Date:

(A) resolutions duly adopted by the Board of Directors of the Company authorizing the execution of this Agreement and the execution, performance and delivery of all agreements, documents and transactions contemplated hereby;

(B) the Certificate of Incorporation and Bylaws of the Company, as in effect immediately prior to the Closing, including all amendments thereto; and

(C) the incumbency of the officers of the Company executing this Agreement and all agreements and documents contemplated hereby.

(D) resolutions duly adopted by the Board of Directors of the Company providing for (i) the amendment of the Company's Bylaws (if required) to increase the number of authorized directors to five (5), and (ii) the appointment of two (2) new directors who shall be designated by Purchaser. One of Purchaser's designees shall be Rajkumar Velagapudi (who shall be appointed or elected to serve as chairman of the Board of Directors upon his appointment to Board of Directors) and the other of whom shall be Sudhakar Konbisetty.

(v) **Certificate of Secretary of Seller**. Purchaser shall have been provided with a certificate executed by the Secretary of the Seller certifying that, as of the Closing:

(A) resolutions duly adopted by the Board of Directors of the Seller authorizing the execution of this Agreement and the execution, performance and delivery of all agreements, documents and transactions contemplated hereby;

(B) that the Seller has obtained the requisite consent of its stockholders required under applicable federal and state law to the consummation of the transactions contemplated by this Agreement as described in the Definitive Information Statement; and

(C) the incumbency of the officers of the Seller executing this Agreement and all agreements and documents contemplated hereby.

(d) **Third Party Consents**. Purchaser shall have been furnished with evidence satisfactory to it that Seller and the Company have obtained those consents, waivers, approvals or authorizations of those Governmental Entities and third parties whose consent or approval are required in connection with this Agreement.

(e) **Injunctions or Restraints; Conduct of Business**. No proceeding brought by any administrative agency or commission of other governmental authority or instrumentality, domestic or foreign, seeking to prevent the consummation of the transactions contemplated by this Agreement shall be pending. In addition, no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint provision limiting or restricting Purchaser's conduct or operation of the business of the Company, following the Closing shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other Governmental Entity, domestic or foreign, seeking the foregoing be pending.

(f) **Resignation of Directors**. Purchaser shall have received letters of resignation from Joseph Perno and Charlotte Denenberg resigning as directors of the Company which resignations in each case shall be effective as of the Closing.

(g) **Employment and Non-Competition Agreements.** All of the non-billable Schedule 1B Employees set forth on Schedule 1 shall have executed a Non-Competition Agreement substantially in the form attached hereto as Exhibit B-2 to the extent required by Section 2.4(b)(iv).

(h) **Assignments**. The assignments contemplated in Section 2.3(a)(iv) shall have been completed and Seller shall have delivered to Purchaser (i) a schedule of assets transferred by such assignments and (ii) satisfactory evidence of such assignments.

## SECTION 8
## INDEMNIFICATION; REMEDIES

8.1 **Survival of Covenants, Representations and Warranties**. Subject to the third sentence of this Section 8.1, all covenants to be performed entirely prior to the Closing Date ("Pre-Closing Covenants") and all representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the consummation of the Purchase and continue until twelve (12) months after consummation of the Purchase; provided that representations, warranties and covenants relating to Taxes (Sections 4.15 and 11) and Employee Benefit Plans (in Section 4.16) shall survive until 30 days after expiration of all applicable statutes of limitations relating to such matters (each of the foregoing dates, the applicable "Indemnity Termination Date"). All covenants set forth herein to be performed partially or entirely after the Closing Date ("Post-Closing Covenants") and their corresponding Indemnity Termination Dates shall survive the Closing and continue until specifically limited by the terms of such Post-Closing Covenants. Notwithstanding the foregoing, if any claims for indemnification have been asserted with respect to any covenants or representations and warranties prior to the applicable Indemnity Termination Date, the covenants or representations and warranties on which any such claims are based shall continue in effect until final resolution of such claims. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the assumed accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

8.2 **Indemnification**. Subject to the limitations set forth in Section 8.3 below, from and after the Closing Date, the Seller and the Company (each an "Indemnifying Person" and collectively the "Indemnifying Persons") shall, jointly and severally, protect, defend, indemnify and hold harmless Purchaser and its affiliates, officers, directors, employees, representatives and agents (each an "Indemnified Person," and collectively the "Indemnified Persons") from and against any and all losses, costs, damages, liabilities, fees (including without limitation attorneys' fees) and expenses (collectively, the "Damages"), that any of the Indemnified Persons incurs or reasonably anticipates incurring by reason of or in connection with any claim, demand, action or cause of action: (i) alleging misrepresentation, breach of, or default in connection with, any of the representations, warranties, covenants or agreements of the Company or Seller contained in this Agreement or the Transaction Agreements, including any exhibits or schedules attached hereto, which becomes known to Purchaser prior to the applicable Indemnity Termination Date; (ii) based on the failure of the Company or the Seller to perform any of their respective obligations under this Agreement or the Transaction Agreements, which failure becomes known to Purchaser prior to the applicable Indemnity Termination Date; (iii) brought by any employees or consultants of the Company within twelve (12) months following the Closing Date who were terminated prior to the Closing Date; or (iv) stemming from an "Event of Default" as defined in (a) the Convertible Promissory Note, (b) the Convertible Promissory Note Purchase Agreement, (c) the Credit Agreement, (d) the Stock Pledge Agreement, (e) the Security Agreement, or (f) the Guarantee Agreement. Damages in each case shall be net of the amount of any insurance proceeds and indemnity and contribution actually recovered by Purchaser.

8.3 **Limitations on Indemnity**. Subject to Section 8.7 below, the Indemnifying Persons shall not be liable to the Indemnified Persons under this Section 8 for any Damages until the amount otherwise due exceeds Fifty Thousand Dollars ($50,000), in which case the Indemnifying Persons shall be liable to the Indemnified Persons for all amounts due including the first Fifty Thousand Dollars ($50,000), provided however, that the Indemnifying Persons' collective maximum liability to the Indemnified Persons under this Section 8 for all Damages shall be capped at $4,000,000.00 plus the amounts paid to Seller pursuant to Section 3.1 hereof (amounts paid under the Bonus Pool under Section 3.1 shall not be considered for the purposes of this Section 8.3). The foregoing notwithstanding, and regardless of any disclosures made on the Company Disclosure Schedule, any Damages related to the Company's ownership of any subsidiary (beginning with the first dollar of such Damages) shall be born one hundred percent (100%) by Seller. Any amounts that are to be paid to Indemnified Persons hereunder may be withheld by Purchaser from payments due Seller under Section 2.2 and any earn-out payments that would otherwise be payable pursuant to Section 3, provided however, that Seller shall be responsible to pay any amounts owed to any Indemnified Persons in excess of such amounts that may be withheld by Purchaser, subject to the limitations on total liability specified above. The limitations set forth in this Section 8.3 shall not apply to any liability for breaches of the representations and warranties set forth in Section 4.1 (Organization, Standing and Power; Subsidiaries), Section 4.2 (Articles of Incorporation and Bylaws), Section 4.3 (Capital Structure), Section 4.4 (Authority), Section 4.15 (Taxes), Section 4.22 (Compliance With Laws), and Section 11 (Tax Matters) if no appropriate disclosure was made with respect thereto in the corresponding disclosure schedules.

8.4 **Third-Party Claims**.

(a) Promptly after receipt by an Indemnified Person of notice of the assertion of a claim by a third party (a "Third-Party Claim") against it, such Indemnified Person shall give notice to the Indemnifying Persons of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Persons will not relieve the Indemnifying Persons of any liability that they may have to any Indemnified Person, except to the extent that the Indemnifying Persons demonstrate that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice. In any such event the Indemnified Person shall reasonably cooperate with the Indemnifying Persons in providing access to information within the control of the Indemnified Person that may be relevant to the Third Party Claim.

(b) If an Indemnified Person gives notice to the Indemnifying Persons pursuant to Section 8.4(a) of the assertion of a Third-Party Claim, the Indemnifying Persons shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that the Indemnifying Persons wish (unless (i) any Indemnifying Person is also a party against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Persons fail to provide reasonable assurance to the Indemnified Person of their financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Persons to the Indemnified Person of their election to assume the defense of such Third-Party Claim, the Indemnifying Persons shall not, so long as they diligently conduct such defense, be liable to the Indemnified Person under this Section 8 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Persons assume the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claim may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation of a legal requirement or any violation of the rights of any Indemnified Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Persons; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its consent. If notice is given to the Indemnifying Persons of the assertion of any Third-Party Claim and the Indemnifying Persons do not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of their election to assume the defense of such Third-Party Claim, the Indemnifying Persons will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Persons, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Persons will not be bound by any determination of any Third-Party Claim so defended or any compromise or settlement effected without their Consent (which may not be unreasonably withheld, delayed or conditioned).

(d) Each party hereby consents to the nonexclusive jurisdiction of any court in which a proceeding in respect of a Third-Party Claim is brought against any Indemnified Person for purposes of any claim that an Indemnified Person may have under this Agreement with respect to such proceeding or the matters alleged therein and agree that process may be served on the Indemnifying Persons with respect to such a claim anywhere in the world; provided that, the Indemnifying Persons shall have the right to assume the defense according to the terms and conditions of Section 8.4(b) above.

(e) With respect to any Third-Party Claim subject to indemnification under this Section 8: (i) both the Indemnified Persons and the Indemnifying Person, as the case may be, shall keep the other persons fully informed of the status of such Third-Party Claim and any related proceedings at all stages thereof where such other person(s) are not represented by separate legal counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Section 8, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use reasonable efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of confidential information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

8.5 **Other Claims**. Subject to the other provisions of this Section 8, a claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

8.6 **Indemnification in Case of Strict Liability or Indemnitee Negligence**. Subject to Section 8.4, THE INDEMNIFICATION PROVISIONS IN THIS SECTION 8 SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS (INCLUDING ANY PAST, PRESENT OR FUTURE ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW, SECURITIES OR OTHER LEGAL REQUIREMENT) AND REGARDLESS OF WHETHER THE INDEMNIFYING PERSONS ALLEGE OR PROVE THE CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PERSON OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED UPON THE INDEMNIFIED PERSON.

8.7 **Fraud**. Notwithstanding anything to the contrary in this Section 8, no limitation or condition of liability provided in this Section 8 shall apply to the breach of any of the representations and warranties contained herein if such representation or warranty was made fraudulently.

8.8 **Claims for Indemnification by at-Fault Party**. If any Indemnified Person makes a claim for indemnification against the Indemnifying Persons under this Section 8, and a court of competent jurisdiction determines such claim was not an indemnifiable claim under this Agreement, the party making such claim shall be responsible for the attorneys' fees and costs of the Indemnifying Persons in defending such claim for indemnification.

8.9 **Tax Matters Claims**. Notwithstanding the indemnification terms set forth in this Section 8, liability and responsibility among the parties for certain tax matters set forth below in Section 11 shall be governed by the terms set forth in Section 11.

## SECTION 9
## TERMINATION; SURVIVAL AND EFFECT OF TERMINATION

9.1 **Termination**. Notwithstanding anything herein to the contrary, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date:

(a) By mutual written consent of Purchaser, Seller and the Company;

(b) By Purchaser, if any of the conditions set forth in Sections 7.1 and 7.3 shall have become reasonably incapable of fulfillment, or if the Closing does not occur, on or before the Option Expiration Date, through no fault of Purchaser, and such condition(s) and/or Closing Date deadline shall not have been waived in writing by Purchaser;

(c) By either Purchaser or Seller if the other (Purchaser on the one hand or Seller and/or the Company on the other) has breached this Agreement in any material respect, but only if the failure to consummate such transaction did not result from the failure by the party(ies) seeking such termination to fulfill any condition set forth in Section 7 which is a condition precedent to the obligation of the other under this Agreement to consummate the transactions contemplated hereby.

9.2. **Survival**. If this Agreement is terminated prior to Closing and the transactions contemplated hereby are not consummated as described above, this Agreement shall become void and of no further force and effect, except for the provisions of this Section 9.2 (relating to termination and survival); Section 10.3 (relating to the obligations of confidentiality); Section 10.4 (relating to disclosure); and Section 12 (relating to certain miscellaneous provisions).

**SECTION 10**
**COVENANTS OF SELLER AND THE COMPANY**

10.1 **Conduct of Business of the Company**. During the period from the Effective Date and continuing until the earlier of the termination of this Agreement or the Closing Date, Seller agrees to cause the Company and the Company agrees (except to the extent expressly contemplated by this Agreement or as consented to in writing by Purchaser) to carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay its debts and Taxes when due (subject (i) to good faith disputes over such debts or Taxes and (ii) to Purchaser's consent to the filing of material Returns if applicable), to pay or perform other obligations when due, and to use all reasonable efforts consistent with past practice and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses shall be unimpaired at the Closing Date. Seller and the Company agree to promptly notify Purchaser of any event or occurrence not in the ordinary course of the Company's business, and of any event which could have a Material Adverse Effect. Without limiting the foregoing, except as expressly contemplated by this Agreement, the Company shall not and the Seller shall not allow, cause or permit the Company to do any of the following, without the prior written consent of Purchaser:

(a) **Charter Documents**. Amend the Company's Certificate of Incorporation or Bylaws;

(b) **Issuance of Securities**. Issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of the Company's capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating the Company to issue any such shares or other convertible securities;

(c) **Dividends; Changes in Capital Stock**. Declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of the Company's capital stock, or split, combine or reclassify any of the Company's capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of the Company's capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of the Company's capital stock;

(d) **Stock Option Plans, Etc**. Adopt or approve any equity incentive plan or accelerate, amend or change the period of exercisability or vesting of options or other rights that may have been granted under the Company's existing stock plans or authorize cash payments in exchange for any options or other rights granted under any such plans.

(e) **Material Contracts**. Enter into any material contract or commitment, or violate, amend or otherwise modify or waive any of the terms of any material contract, other than in the ordinary course of business consistent with past practice;

(f) **Intellectual Property**. Transfer to any person or entity any rights to the Company's Intellectual Property other than in the ordinary course of business consistent with past practice;

(g) **Exclusive Rights.** Enter into or amend any agreements pursuant to which any party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of the Company's products or technology;

(h) **Dispositions**. Sell, lease, license or otherwise dispose of or encumber any of the Company's properties or assets which are material, individually or in the aggregate, to its business, taken as a whole, except in the ordinary course of business consistent with past practice;

(i) **Indebtedness**. Incur any indebtedness, other than indebtedness pursuant to the Credit Agreement, the Note and the Note Purchase Agreement, for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(j) **Leases.** Enter into any operating lease with total commitments in excess of $10,000;

(k) **Payment of Obligations**. Pay, discharge or satisfy in an amount in excess of $10,000 in the aggregate, any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of liabilities reflected or reserved against in the Company Financial Statements;

(l) **Capital Expenditures**. Make any capital expenditures, capital additions or capital improvements in excess of $10,000;

(m) **Insurance**. Materially reduce the amount of any material insurance coverage provided by existing insurance policies;

(n) **Termination or Waiver**. Terminate or waive any right of substantial value;

(o) **Employee Benefit Plans; New Hires; Pay Increases**. Adopt or amend any employee benefit or stock purchase, option or other equity incentive plan, or hire any new employees, pay any special bonus or special remuneration to any employee or director, or increase the salaries or wage rates of its employees, except in the ordinary course of business consistent with past practice;

(p) **Severance Arrangement**. Grant any severance or termination pay (i) to any director or officer or (ii) to any other employee, except payments made pursuant to standard written agreements outstanding on the date hereof that have been disclosed to and approved by Purchaser, and except for any severance or termination pay in the ordinary course of business consistent with past practice;

(q) **Lawsuits**. Commence a lawsuit other than (i) for the routine collection of bills, (ii) in such cases where the Company's Board of Directors in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of the Company's business, provided that Seller and the Company consult with Purchaser prior to the filing of such a suit, or (iii) for a breach of this Agreement;

(r) **Acquisitions.** Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Company's business, taken as a whole;

(s) **Taxes**. Other than in the ordinary course of business or as contemplated by Section 11 below, make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any material Return or any amendment to a material Return, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(t) **Notices**. Fail to give any notices or other information required to be given to the employees of the Company or to any applicable government authority under the National Labor Relations Act, the Code, the Consolidated Omnibus Budget Reconciliation Act, and other applicable law in connection with the transactions provided for in this Agreement;

(u) **Revaluation**. Revalue any of the Company's assets, including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business; or

(v) **Other.** Take, or agree in writing or otherwise to take, any of the actions described in Sections 10.1(a) through (u) above, or any action which would make any of the representations or warranties of the Company or Seller contained in this Agreement untrue or incorrect or prevent any of them from performing or causing any of them not to perform their respective covenants hereunder.

10.2 **No Solicitation**. The Company and the officers, directors, employees or other agents of the Company will not, directly or indirectly, (i) take any action to solicit, initiate or encourage any Takeover Proposal (defined below) or (ii) engage in negotiations with, or disclose any nonpublic information relating to the Company to or afford access to the properties, books or records of the Company to, any person that has advised the Company or the Seller that it may be considering making, or that has made, a Takeover Proposal. The Company or Seller, as the case may be, will promptly notify Purchaser after receipt of any Takeover Proposal or any notice that any person is considering making a Takeover Proposal or any request for nonpublic information relating to the Company or for access to the properties, books or records of the Company by any person that has advised the Company that it may be considering making, or that has made, a Takeover Proposal, and will keep Purchaser fully informed of the status and details of any such Takeover Proposal notice or request. For purposes of this Agreement, "Takeover Proposal" means any offer or proposal for, or any indication of interest in, a Purchase or other business combination involving the Company or the acquisition of any significant equity interest in, or a significant portion of the assets of, the Company, other than the transactions contemplated by this Agreement.

10.3 **Access; Confidentiality**. Each of the Company and Seller agree to cause the Company to make available all books, records, facilities, employees, non-employee agents (such as patent and regulatory counsel) and information necessary for Purchaser to evaluate the business, operations, properties and financial condition of the Company. All parties agree to keep confidential and shall not make use of any information treated by any other party hereto as confidential (including, without limitation, the existence of this Agreement), obtained from the such other party concerning the assets, properties, business or operations of such other party other than disclosing such information to legal counsel, consultants, financial advisors, and key employees where such disclosure is related to the performance of obligations under this Agreement or the consummation of the transactions contemplated under this Agreement (all of whom shall be similarly bound by the provisions of this Section 10.3), except as may be required to be disclosed by applicable law. Notwithstanding the foregoing, the foregoing confidentiality restrictions shall not apply to any information which (a) becomes generally available to the public through no fault of the receiving party or its employees, agents or representatives; (b) is independently developed by the receiving party without benefit of the above-described information (and such independent development is substantiated in writing), or was rightfully received from another source on a non-confidential basis; (c) when such disclosure is required by a court or governmental authority or is otherwise required by law to be disclosed or is necessary to establish rights under this Agreement or any agreement contemplated hereby (and the disclosing party has taken all reasonable efforts to limit the scope of such disclosure and to protect the confidential nature of the information disclosed).

10.4 **Public Announcements**. All parties hereto agree that Purchaser will be responsible for any press release or publication with respect to the existence of this Agreement or the transactions contemplated hereby, and further agree to cooperate in good faith with respect to any such press release or public statement, and, except with respect to the Seller's obligation to file a Form 8-K with the SEC describing the transactions contemplated hereby (a copy of which shall be provided to Purchase in advance of such filing), or as may otherwise be required by law, further agree not to issue any such press release or public statement without the prior written consent of Purchaser (in the case of a publication proposed by the Company and/or Seller). Purchaser agrees to provide any such press release or public statement to the Company and Seller in advance of publication and to provide the Company and Seller a reasonable opportunity to review and comment on such publication.

10.5 **Cooperation**. Each Party hereto will fully cooperate with the other parties, their counsel and accountants in connection with any steps required to be taken as part of its obligations under this Agreement. Each party will use reasonable efforts to cause all conditions to this Agreement to be satisfied as promptly as possible and to obtain all consents and approvals necessary for the due and punctual performance of this Agreement and for the satisfaction of the conditions hereof. No party will undertake any course of action inconsistent with this Agreement or which would make any representations, warranties or agreements made by such party in this Agreement untrue or any conditions precedent to this Agreement unable to be satisfied at or prior to the Closing.

10.6 **Employees of the Business.** Between the date of this Agreement and the Closing Date, the Company shall allow Purchaser to have free access to all employees of the Company for discussions regarding the operations and performance of the Company.

10.7 **Notification of Claims**. From the date of this Agreement to and including the Closing Date, the Company and/or Sellers shall promptly notify Purchaser in writing of the commencement or threat of any claims, litigation or proceedings against or affecting the Company of which the Company and/or Seller has knowledge.

10.8 **Use of Office Space and Executive Time**. The Company and Seller hereby acknowledge and agree to allow Purchaser reasonable use of the Company's office space and access to the Company's executive officers for purposes related to this Agreement from the Effective Date through the Closing Date. After the Closing Date, the Purchaser hereby acknowledges and agrees to allow Seller the reasonable use of the Company's office space and access to the Company's executive officers for purposes related to the Seller's transition following the Closing, not to exceed six (6) months.

10.9 **Further Acts**. After the Closing Date, each party hereto, at the request of and without any further cost or expense to the other parties will take any further actions necessary or desirable to carry out the purposes of this Agreement and to vest in Purchaser full title to all properties, assets and rights of the Company. In addition, without in any way limiting the generality of the foregoing, the Company and, to the extent required, Seller hereby agree to take any and all further actions necessary or desirable to carry out the assignment to Purchaser of all Intellectual Property of the Company.

## SECTION 11
## TAX MATTERS

11. **Tax Matters**. The following provisions shall govern the allocation of responsibility as between Purchaser and the Seller with respect to certain tax matters following the Closing Date.

11.1 **Cooperation**. Purchaser and Seller agree to furnish or cause to be furnished to one another, upon request, as promptly as practicable, such information and assistance relating to the Company as is reasonably necessary for the filing of all Returns of or with respect to the Company, the making of any election related to Taxes of or with respect to the Company, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Return of or with respect to the Company. Purchaser and the Seller shall cooperate with each other in the conduct of any audit or other proceeding related to Taxes of or with respect to the Company and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 11.1. In the event the Seller, on the one hand, or Purchaser or Company, on the other, receives notice of any proposed audit, claim, assessment or other dispute concerning an amount of Taxes with respect to which the other party may incur liability hereunder, the party so informed shall promptly notify the other party of such matter; provided that failure to promptly notify shall not reduce the other party's indemnity obligation hereunder except to the extent such party is actually prejudiced thereby.

11.2 **Section 338 Election**.

(a) The parties shall cooperate in jointly making an election under Section 338(h)(10) of the Code with respect to the acquisition of the Shares pursuant to the transactions contemplated by this Agreement. In no event shall the Seller make or permit to be made any other election under Section 338 of the Code with respect to the acquisition of the Shares pursuant to the transactions contemplated by this Agreement without the written consent of Purchaser, and in no event shall Purchaser make or permit to be made an election under Section 338(g) with respect to any deemed purchase of the Shares without the written consent of the Seller. Purchaser shall prepare and deliver to the Seller the initial version of the Form 8023 (the "Initial 8023") relating to such Section 338(h)(10) election, which version the Seller shall cause to be signed by the appropriate persons and delivered to Purchaser at the Closing; provided, however, that if within five (5) days of receiving the Initial 8023 the Seller submits to Purchaser a written objection (the "Objections Notice") to the allocation to the Company's assets of the consideration paid and deemed paid for the Shares as reflected in the Initial 8023, the provisions of subsection (b) below shall apply. If no Objections Notice is submitted to Purchaser within such five (5) day period, the allocation reflected in the Initial 8023 shall be binding on the parties, absent such adjustments as may be based on the final determination of the Company's current assets at the time of Closing (the "Closing Current Assets"), changes in Purchaser's financial accounting for the transaction, or an agreement among Purchaser and the Seller.

(b) Following receipt by Purchaser of any Objections Notice, Purchaser and the Seller shall negotiate in good faith to resolve the objections set forth therein. If the parties fail to agree within fifteen (15) days after the delivery of the Objections Notice, then the disputed items included in the Objections Notice shall be resolved by a mutually designated accounting firm (the "Accounting Referee"), whose determination shall be final and binding on all parties hereto. The Accounting Referee shall resolve the dispute within thirty (30) days after the item has been referred to it. Seller shall bear one-half of any costs incurred in connection with the retention of the Accounting Referee in accordance with this Section 11.2(b), and Purchaser shall bear the other half. Purchaser shall not file the Form 8023 until the expiration of the five (5)-day period referred to in subsection (a) above or, if an Objections Notice has been received within such period, until the issues in the Objections Notice have been resolved by the parties or by the Accounting Referee; provided, however, that if for any reason the issues are not resolved prior to the due date for filing such Form 8023, Purchaser shall be entitled to file (and the Seller shall cooperate in filing) the Form 8023 based on the Initial 8023 (with such modifications thereto based on the final determination of Closing Current Assets, changes in Purchaser's financial accounting for the transaction, any partial determinations by the Accounting Referee, and any changes to which the parties have agreed), and in the event the form is filed prior to such resolution the parties shall attempt to amend such Form 8023 as necessary to reflect such final resolution.

(c) No party to this Agreement shall be liable to any other party in the event of any inaccuracy in the allocation to the Company's assets of the consideration paid and deemed paid for the Shares.

(d) The Parties acknowledge that if Purchaser or Seller request that an election be made under Section 338(h)(10) of the Code, such election shall be made no later than the 15th day of the 9th month of the month beginning after the Effective Date.

11.3 **Tax Return Preparation; Audits**.

(a) Seller shall include the income of the Company (including any deferred items triggered into income by Treas. Reg. Section 1.1502-13 and any excess loss account taken into income under Treas. Reg. Section 1.1502-19) on Seller's consolidated federal income tax Return for all periods through the end of the Closing Date and pay any federal income Tax attributable such income. For all taxable periods ending on or before the Closing Date, the Seller shall cause the Company to join in Seller's consolidated federal income tax return and, in any jurisdiction requiring separate reporting from the Seller, to file separate company state and local income tax returns. All such Returns shall be prepared and filed in a manner consistent with prior practice, except as required by a change in applicable law. Purchaser shall have the right to review and comment on any such Return prepared by Seller. Purchaser shall cause the Company to furnish information to the Seller as reasonably requested to allow Seller to satisfy its obligations under this Section 11.3(a) in accordance with past practice or custom. The Company and Purchaser shall consult and cooperate with the Seller as to any elections to be made on the returns of the Company for periods ending on or before the Closing Date. The Seller shall be bound by and shall not take any position inconsistent with the Returns to be prepared by Seller that Purchaser has reviewed pursuant to this Section 11.3. No party may amend a Return filed in accordance with this Agreement by any party with respect to the Company for a taxable period beginning prior to the Closing Date without the consent of the other parties, not to be unreasonably withheld.

(b) Seller shall allow the Company and its counsel to participate in any audit of Sellers consolidated federal income tax Return to the extent that such returns relate to the Company. Sellers shall not settle any audit in a manner that would adversely affect the Company after the Closing Date without the advanced written consent of Purchaser, which consent shall not be unreasonably withheld.

11.4 **Section 338(h)(10) Election Allocation**.

(a) If the Section 338(h)(10) election contemplated in Section 11.2 hereof is jointly made by Purchaser and Seller pursuant to Section 11.2, and in accordance with Sections 11.1, then within a reasonable period following such request Purchaser shall prepare and deliver to Seller a statement (an "Allocation Statement") allocating the consideration paid and deemed paid for the Shares through the date thereof, as determined by Purchaser consistent with applicable tax reporting principles, among the assets of the Company, in such amounts reasonably determined by Purchaser to be consistent with Section 338 of the Code and the regulations (including, to the extent applicable, proposed regulations) thereunder. The Allocation Statement shall be amended by Purchaser from time to time as necessary to reflect adjustments to the consideration paid or deemed paid for the Shares.

(b) The Seller shall have a period of twenty (20) business days after the delivery of the Allocation Statement (including any amended Allocation Statement) to present in writing to Purchaser notice of any objections Seller may have to the allocations set forth therein (a "Seller Objections Notice"). Unless the Seller timely objects, such Allocation Statement shall be binding on all parties hereto without further adjustment, absent manifest error.

(c) If the Seller shall raise any objections within the 20-business day period, Purchaser and the Seller shall negotiate in good faith and use their best efforts to resolve such dispute. If the parties fail to agree within fifteen (15) days after the delivery of the Seller Objections Notice, then the disputed items shall be resolved by the Accounting Referee, whose determination shall be final and binding on all parties hereto. The Accounting Referee shall resolve the dispute within thirty (30) days after the item has been referred to it. Seller shall bear one-half of any costs incurred in connection with the need to retain the services of an Accounting Referee in accordance with this Section 11.2(b) and Purchaser shall bear the other one-half.

11.5 **Seller's Responsibility for Certain Taxes**.

(a) Except to the extent of any and all Taxes accrued on the Financial Statements, the Seller shall jointly and severally indemnify, defend and hold harmless Purchaser (and, after the Closing, Company) from and against (i) all Taxes of the Company, and all Taxes with respect to which the Company is or could be liable, that are due with respect to periods ending on or prior to the Closing Date, (ii) all such Taxes that are due with respect to periods ("Straddle Periods") that include but do not end on the Closing Date to the extent attributable to the portion of the Straddle Period (the "Pre-Closing Straddle Period") ending at the close of business on the Closing Date (determined as provided below), and all Taxes of the Company arising from the transactions contemplated by this Agreement (including the Section 338(h)(10) election, if made pursuant to Section 11.2 above), (iii) any failure, prior to Closing, to comply with applicable laws or agreements (including this Agreement) pertaining to Taxes, (iv) any breach of a representation in Section 4.15, (v) any Taxes incurred by Purchaser or its affiliates as a result of the receipt of indemnification payments under this Agreement; and (vi) all losses incurred in connection with amounts described in clauses (i) through (v) of this sentence. Notwithstanding the foregoing, the Seller shall be entitled to cause the Company to pay prior to the Closing Date any Tax incurred by the Company to the extent that such Tax was incurred by the Company in the ordinary course of its business, and payment of such Tax at such time is consistent with the historic practice of the Company.

(b) Amounts payable by the Seller pursuant to Section 11.5(a) shall be paid by the Seller when due, and in no event later than five (5) days following request therefor from Purchaser.

(c) Taxes for any Straddle Period shall be attributable to the Pre-Closing Straddle Period (and borne by the Seller as provided above) to the extent that such Taxes would have been incurred during the Straddle Period if the applicable taxable period ended at the close of business on the Closing Date (except that Taxes imposed on a basis other than net or gross income, receipts, sales, payroll or the like shall be prorated on a daily basis).

11.6 **Treatment of Indemnity Payments**. It is the intent of the Parties that amounts paid under Section 8 or this Section 11 shall represent an adjustment to the Purchase Price and the parties will report such payments consistent with such intent.

**SECTION 12**
**MISCELLANEOUS**

12.1 **Survival of Warranties**. The representations, warranties and agreements set forth in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing and (except to the extent that survival is necessary to effectuate the intent of such provisions) shall terminate on the first anniversary of the Closing Date; provided that representations, warranties and covenants relating to Taxes (Sections 4.15 and 11) and Employee Benefit Plans (Section 4.16) shall survive until 30 days after expiration of all applicable statutes of limitations relating to such matters.

12.2 **Notices**. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice,

(a) if to Purchaser, to:

Fortify Infrastructure Services, Inc.
2340A Walsh Avenue
Santa Clara, CA 95051
Attention: Raj Velagapudi, CEO and President
Facsimile No.: (408) 416-3237
Telephone No.: (408) 850-3119

with a copy to:

Royse Law Firm, PC
2600 El Camino Real, Suite 110
Palo Alto, CA 94306
Attention: Laurie A. Allen, Esq.
Facsimile No.: (650) 813-9777
Telephone No.: (659) 813-9700

(b) if to Seller or the Company, to:

NetFabric Holdings, Inc./Seller
UCA Services, Inc./Company
299 Cherry Hill Road
Parsippany, NJ 07054
Attention: Fahad Syed, CEO
Facsimile No.: (973) 384-9061
Telephone No.: (973) 537-0077

with a copy to:

K&L Gates LLP
599 Lexington Avenue
New York, NY 10022
Attention: Robert S. Matlin, Esq.
Facsimile No.: (212) 536-4066
Telephone No.: (212) 536-3901

12.3 **Interpretation**. When a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. The phrases "the date of this Agreement", "the date hereof," and terms of similar import, unless the context otherwise requires, shall be deemed to refer to the Effective Date. Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

12.4 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

12.5 **Entire Agreement; Nonassignability; Parties in Interest**. This Agreement and the documents referred to herein are the product of all parties hereto and thereto, and constitute the entire agreement between such parties pertaining to the subject matter hereof and thereof, and merge all prior negotiations and drafts of the parties with regard to the transactions contemplated herein and therein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions: (a) are expressly canceled except for the provisions of the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms; (b) are not intended to confer upon any other person any rights or remedies hereunder**;** and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

12.6 **Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

12.7 **Remedies Cumulative**. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

12.8 **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

12.9 **Rules of Construction**. The parties hereto agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

12.10 **Waiver of Restrictions**. The Company hereby consents to the transfers of the Shares that are the subject of this Agreement and waives any restrictions on transfer applicable to such Shares with respect to the transfers contemplated by this Agreement.

12.11 **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 12.11 shall be binding upon the parties and their respective successors and assigns.

***[Signature Page Follows]***

The Parties have duly executed this Agreement as of the Effective Date.

**FORTIFY INFRASTRUCTURE SERVICES, INC.**

/s/ _____
Mr. Rajkumar Velagapudi
President and Chief Executive Officer

**NETFABRIC HOLDINGS, INC.**

/s/ _____
Mr. Fahad Syed
Chief Executive Officer

**NETFABRIC TECHNOLOGIES, INC. D/B/A UCA SERVICES, INC..**

/s/ _____
Mr. Fahad Syed
Chief Executive Officer

**SCHEDULE 1**

**EMPLOYEES**

**SCHEDULE 1B**

**EMPLOYEES**

**SCHEDULE 2**

**COMPANY DISCLOSURE SCHEDULE**

**EXHIBIT A**

**FORM OF UNSECURED PROMISSORY NOTE**

**EXHIBIT B-1**

**FORM OF EMPLOYMENT AND NONCOMPETITION AGREEMENT**

**EXHIBIT B-2**

**FORM OF NONCOMPETITION AGREEMENT**

**EXHIBIT C**

**LEGAL OPINION**

**EXHIBIT D**

**IMMIGRATION OPINION**

**EXHIBIT E**

**FORM OF INCENTIVE COMPENSATION PLAN**