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

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2011**

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO .**

COMMISSION FILE NUMBER: 0-23599

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**MERCURY COMPUTER SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

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**MASSACHUSETTS**  
(State or other jurisdiction of  
incorporation or organization)

**201 RIVERNECK ROAD**  
**CHELMSFORD, MA**  
(Address of principal executive offices)

**04-2741391**  
(I.R.S. Employer  
Identification No.)

**01824**  
(Zip Code)

**978-256-1300**  
(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes  No

Shares of Common Stock outstanding as of April 29, 2011: 30,178,652 shares

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## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

## MERCURY COMPUTER SYSTEMS, INC.

## CONSOLIDATED BALANCE SHEETS

(In thousands, except per share and share data)

(Unaudited)

|  | March 31,<br>2011 | June 30,<br>2010 |
|--|-------------------|------------------|
| <b>Assets</b>  |                   |                  |
| Current assets:  |                   |                  |
| Cash and cash equivalents  | \$ 156,421        | \$ 56,241        |
| Marketable securities and related receivables  | —                 | 18,025           |
| Accounts receivable, net of allowance for doubtful accounts of \$17 at March 31, 2011 and \$163 at June 30, 2010   | 43,604            | 36,726           |
| Unbilled receivables   | 1,151             | 6,938            |
| Inventory  | 19,279            | 17,622           |
| Deferred tax assets  | 6,076             | 5,393            |
| Prepaid income taxes   | 159               | 2,546            |
| Prepaid expenses and other current assets  | 3,231             | 2,363            |
| Total current assets   | 229,921           | 145,854          |
| Restricted cash  | 3,000             | 3,000            |
| Property and equipment, net  | 12,792            | 10,298           |
| Goodwill   | 79,813            | 57,653           |
| Acquired intangible assets, net  | 17,387            | 1,141            |
| Deferred tax assets  | —                 | 5,419            |
| Other non-current assets   | 1,721             | 973              |
| Total assets   | <u>\$344,634</u>  | <u>\$224,338</u> |
| <b>Liabilities and Shareholders' Equity</b>  |                   |                  |
| Current liabilities:   |                   |                  |
| Accounts payable   | \$ 7,030          | \$ 10,533        |
| Accrued expenses   | 6,952             | 5,078            |
| Accrued compensation   | 12,381            | 10,723           |
| Income taxes payable   | 1,009             | 220              |
| Deferred revenues and customer advances  | 7,546             | 8,051            |
| Total current liabilities  | 34,918            | 34,605           |
| Deferred gain on sale-leaseback  | 5,845             | 6,713            |
| Deferred tax liabilities   | 1,087             | —                |
| Income taxes payable   | 1,825             | 1,836            |
| Other non-current liabilities  | 6,805             | 2,072            |
| Total liabilities  | 50,480            | 45,226           |
| Commitments and contingencies (Note P)   |                   |                  |
| Shareholders' equity:  |                   |                  |
| Preferred stock, \$.01 par value; 1,000,000 shares authorized; no shares issued or outstanding   | —                 | —                |
| Common stock, \$.01 par value; 85,000,000 shares authorized; 27,745,446 and 22,883,314 shares issued and outstanding at March 31, 2011 and June 30, 2010, respectively | 289               | 229              |
| Additional paid-in capital   | 210,760           | 110,270          |
| Retained earnings  | 81,862            | 67,671           |
| Accumulated other comprehensive income   | 1,243             | 942              |
| Total shareholders' equity   | 294,154           | 179,112          |
| Total liabilities and shareholders' equity   | <u>\$344,634</u>  | <u>\$224,338</u> |

The accompanying notes are an integral part of the consolidated financial statements.

**MERCURY COMPUTER SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)  
(Unaudited)

|  | Three Months Ended |                 | Nine Months Ended |                 |
|--|--------------------|-----------------|-------------------|-----------------|
|  | March 31,          |                 | March 31,         |                 |
|  | 2011               | 2010            | 2011              | 2010            |
| Net revenues   | \$59,855           | \$43,603        | \$167,476         | \$136,192       |
| Cost of revenues   | 26,973             | 18,800          | 72,294            | 58,222          |
| Gross margin   | 32,882             | 24,803          | 95,182            | 77,970          |
| Operating expenses:  |                    |                 |                   |                 |
| Selling, general and administrative                          | 14,437             | 12,538          | 42,653            | 37,367          |
| Research and development                                     | 10,683             | 10,629          | 32,061            | 30,726          |
| Impairment of long-lived assets                              | —                  | 61              | —                 | 211             |
| Amortization of acquired intangible assets                   | 663                | 434             | 1,299             | 1,302           |
| Restructuring  | —                  | (11)            | —                 | 243             |
| Acquisition costs and other related expenses                 | 100                | —               | 407               | —               |
| Total operating expenses                                     | <u>25,883</u>      | <u>23,651</u>   | <u>76,420</u>     | <u>69,849</u>   |
| Income from operations                                       | 6,999              | 1,152           | 18,762            | 8,121           |
| Interest income  | 6                  | 195             | 19                | 437             |
| Interest expense   | (10)               | (147)           | (68)              | (317)           |
| Other income, net  | 390                | 264             | 1,310             | 799             |
| Income from continuing operations before income taxes        | 7,385              | 1,464           | 20,023            | 9,040           |
| Income tax expense (benefit)                                 | 2,007              | (2,235)         | 5,780             | (999)           |
| Income from continuing operations                            | 5,378              | 3,699           | 14,243            | 10,039          |
| Loss from discontinued operations, net of income taxes       | —                  | (423)           | (52)              | (408)           |
| Gain on sale of discontinued operations, net of income taxes | —                  | —               | —                 | 74              |
| Net income   | <u>\$ 5,378</u>    | <u>\$ 3,276</u> | <u>\$ 14,191</u>  | <u>\$ 9,705</u> |
| Basic net earnings (loss) per share:                         |                    |                 |                   |                 |
| Income from continuing operations                            | \$ 0.20            | \$ 0.16         | \$ 0.59           | \$ 0.45         |
| Loss from discontinued operations                            | —                  | (0.02)          | —                 | (0.02)          |
| Gain on sale of discontinued operations                      | —                  | —               | —                 | —               |
| Net income   | <u>\$ 0.20</u>     | <u>\$ 0.14</u>  | <u>\$ 0.59</u>    | <u>\$ 0.43</u>  |
| Diluted net earnings (loss) per share:                       |                    |                 |                   |                 |
| Income from continuing operations                            | \$ 0.20            | \$ 0.16         | \$ 0.57           | \$ 0.44         |
| Loss from discontinued operations                            | —                  | (0.02)          | —                 | (0.02)          |
| Gain on sale of discontinued operations                      | —                  | —               | —                 | —               |
| Net income   | <u>\$ 0.20</u>     | <u>\$ 0.14</u>  | <u>\$ 0.57</u>    | <u>\$ 0.42</u>  |
| Weighted-average common shares outstanding:                  |                    |                 |                   |                 |
| Basic  | 26,272             | 22,627          | 24,105            | 22,509          |
| Diluted  | <u>27,324</u>      | <u>23,152</u>   | <u>24,911</u>     | <u>22,921</u>   |
| Comprehensive income:  |                    |                 |                   |                 |
| Net income   | \$ 5,378           | \$ 3,276        | \$ 14,191         | \$ 9,705        |
| Foreign currency translation adjustments                     | 60                 | 88              | 299               | 101             |
| Net unrealized gain (loss) on investments                    | 2                  | —               | 2                 | (83)            |
| Total comprehensive income                                   | <u>\$ 5,440</u>    | <u>\$ 3,364</u> | <u>\$ 14,492</u>  | <u>\$ 9,723</u> |

The accompanying notes are an integral part of the consolidated financial statements.

**MERCURY COMPUTER SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

|   | Nine Months Ended |                  |
|---|-------------------|------------------|
|   | March 31,         |                  |
|   | 2011              | 2010             |
| <b>Cash flows from operating activities:</b>                                      |                   |                  |
| Net income  | \$ 14,191         | \$ 9,705         |
| Adjustments to reconcile net income to net cash provided by operating activities: |                   |                  |
| Depreciation and amortization expense   | 5,939             | 5,092            |
| Stock-based compensation expense  | 4,222             | 2,968            |
| Provision (benefit) for deferred income taxes                                     | 854               | (64)             |
| Excess tax benefit from stock-based compensation                                  | (570)             | (819)            |
| Impairment of long-lived assets   | —                 | 211              |
| Gain on sale of discontinued operations   | —                 | (74)             |
| Other non-cash income   | (694)             | (966)            |
| Changes in operating assets and liabilities, net of effects of business acquired: |                   |                  |
| Accounts receivable, net and unbilled receivables                                 | 1,308             | (1,872)          |
| Inventory   | 1,841             | (3,264)          |
| Prepaid expenses and other current assets   | (1,196)           | 950              |
| Prepaid income taxes  | 2,483             | (2,330)          |
| Other assets  | (748)             | (86)             |
| Accounts payable and accrued expenses   | (3,313)           | 3,996            |
| Deferred revenues and customer advances   | (2,215)           | (570)            |
| Income taxes payable  | 676               | (916)            |
| Other non-current liabilities   | 67                | 334              |
| <b>Net cash provided by operating activities</b>                                  | <b>22,845</b>     | <b>12,295</b>    |
| <b>Cash flows from investing activities:</b>                                      |                   |                  |
| Acquisition of business, net of cash acquired                                     | (29,508)          | —                |
| Sales and maturities of marketable securities                                     | 18,025            | 12,175           |
| Purchases of property and equipment   | (5,336)           | (4,948)          |
| Payments for acquired intangible assets   | (2,375)           | (183)            |
| Payments on sale of discontinued operations                                       | —                 | (805)            |
| <b>Net cash (used in) provided by investing activities</b>                        | <b>(19,194)</b>   | <b>6,239</b>     |
| <b>Cash flows from financing activities:</b>                                      |                   |                  |
| Proceeds from follow-on public stock offering, net                                | 93,945            | —                |
| Proceeds from employee stock plans  | 2,188             | 1,266            |
| Payments under line of credit   | —                 | (8,432)          |
| Payments of deferred financing activities   | (6)               | (169)            |
| Excess tax benefit from stock-based compensation                                  | 570               | 819              |
| Repurchases of common stock   | —                 | (428)            |
| (Payments) proceeds of capital lease obligations and other                        | (240)             | 44               |
| <b>Net cash provided by (used in) financing activities</b>                        | <b>96,457</b>     | <b>(6,900)</b>   |
| Effect of exchange rate changes on cash and cash equivalents                      | 72                | 240              |
| <b>Net increase in cash and cash equivalents</b>                                  | <b>100,180</b>    | <b>11,874</b>    |
| Cash and cash equivalents at beginning of period                                  | 56,241            | 46,950           |
| <b>Cash and cash equivalents at end of period</b>                                 | <b>\$ 156,421</b> | <b>\$ 58,824</b> |
| <b>Cash paid during the period for:</b>   |                   |                  |
| Interest  | \$ 16             | \$ —             |
| Income taxes  | \$ 1,548          | \$ 2,504         |
| <b>Supplemental disclosures—non-cash activities:</b>                              |                   |                  |
| Issuance of restricted stock awards to employees                                  | \$ 8,698          | \$ 6,112         |
| Acquisition of intangible assets  | \$ 495            | \$ —             |
| Capital lease   | \$ 251            | \$ —             |

The accompanying notes are an integral part of the consolidated financial statements.

**MERCURY COMPUTER SYSTEMS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(Amounts in thousands, except per share data)  
(Unaudited)

**A. Description of Business**

Mercury Computer Systems, Inc. (the “Company” or “Mercury”) designs, manufactures and markets commercially developed, high-performance embedded, real-time digital signal and image processing systems and software for specialized defense and commercial computing markets. The Company’s solutions play a critical role in a wide range of applications, transforming sensor data to information for analysis and interpretation. In military reconnaissance and surveillance platforms, the Company’s systems process real-time radar, video, sonar and signals intelligence data. The Company’s systems are also used in semiconductor imaging applications, including photomask generation and wafer inspection. The Company also provides radio frequency products for enhanced communications capabilities in military and commercial applications. Additionally, the Company entered the defense prime contracting market space in fiscal 2008 through the creation of its wholly-owned subsidiary, Mercury Federal Systems, Inc. (“MFS”), to focus on reaching the federal intelligence and homeland security agencies.

The Company’s products and solutions address mission-critical requirements within the defense industry for C4ISR (command, control, communications, computers, intelligence, surveillance and reconnaissance) and electronic warfare, or EW, systems and services, which target several markets including maritime defense, airborne reconnaissance, ballistic missile defense, ground mobile and force protection systems, and tactical communications and network systems. The Company’s products are deployed in over 300 different programs across 26 different prime defense contractors.

**B. Summary of Significant Accounting Policies**

**BASIS OF PRESENTATION**

The accompanying consolidated financial statements have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and with the instructions to the Form 10-Q and Article 10 of Regulation S-X. Certain information and footnote disclosures, normally included in annual consolidated financial statements have been condensed or omitted pursuant to those rules and regulations; however, in the opinion of management the financial information reflects all adjustments, consisting of adjustments of a normal recurring nature, necessary for fair presentation. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and related notes for the fiscal year ended June 30, 2010 which are contained in the Company’s Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”) on August 19, 2010. The results for the three and nine months ended March 31, 2011 are not necessarily indicative of the results to be expected for the full fiscal year.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated.

**USE OF ESTIMATES**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

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### RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

Effective March 31, 2010, the Financial Accounting Standards Board (“FASB”) amended Accounting Standard Codification (“ASC”) Topic 350, *Intangibles—Goodwill and Other* (“FASB ASC 350”), formerly FASB Statement No. 142, *Goodwill and Other Intangible Assets*, paragraph 20-50, *Goodwill Disclosures*, to require an entity to disclose accumulated goodwill impairment losses in the rollforward of goodwill for years beginning after December 15, 2008. The FASB staff clarified that the intent of the amendment was to include accumulated goodwill impairment losses in the rollforward from the adoption date of FASB ASC 350. There are no accumulated goodwill impairment losses at March 31, 2011.

### C. Acquisitions

On January 12, 2011, the Company entered into a stock purchase agreement (the “Stock Purchase Agreement”) with LNX Corporation (“LNX”), the holders of the equity interests of LNX, and Lamberto Raffaelli, as the sellers’ representative (collectively, the “Sellers”). Pursuant to the Stock Purchase Agreement, the Company completed its purchase of all of the outstanding equity interests in LNX, and LNX became a wholly-owned subsidiary of the Company. Based in Salem, NH, LNX designs and builds next generation radio frequency receivers for signal intelligence, communication intelligence as well as electronic attack applications. LNX is included in the Advanced Computing Solutions (“ACS”) business unit.

The Company acquired LNX for a purchase price of \$31,000 paid in cash, plus an earnout of up to \$5,000 payable in cash, based upon achievement of financial targets during calendar years 2011 and 2012. The Company funded the purchase price with cash on hand. The Company acquired LNX free of bank debt. Immediately prior to the consummation of the acquisition, LNX divested its non-defense global procurement business. The Company determined the fair value of the contingent consideration as part of the LNX acquisition based on the probability of LNX attaining the specified financial targets and assigned a fair value of \$4,828 to the liability. As of March 31, 2011, the Company expects to achieve the financial targets for calendar years 2011 and 2012 and to pay the full earnout. The purchase price was subject to post-closing adjustment based on a determination of LNX’s closing net working capital.

In accordance with the Stock Purchase Agreement, \$6,200 of the purchase price was placed into escrow to support the post-closing working capital adjustment and the sellers’ indemnification obligations, of which \$1,523 was released to the Sellers and \$27 was released to the Company in March 2011, upon the final calculation of net working capital. The \$4,650 remaining in escrow is available for indemnification claims.

Following the acquisition, the Company’s LNX subsidiary became a guarantor under the Company’s Loan Agreement and granted a security interest in its assets in favor of the Lender (see Note J).

The following table presents the net purchase price for the acquisition of LNX:

|  | <u>Net Purchase Price</u> |
|--|---------------------------|
| Consideration transferred              |                           |
| Cash paid at closing                   | \$ 31,000                 |
| Working capital adjustment             | (272)                     |
| Less cash acquired                     | <u>(1,220)</u>            |
| Total cash paid, net of cash acquired  | 29,508                    |
| Fair value of contingent consideration | 4,828                     |
| Net purchase price                     | <u>\$ 34,336</u>          |

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The following table presents the allocation of the net purchase price for LNX:

|  | <b>Net Purchase<br/>Price<br/>Allocation</b> |
|--|--|
| Cash   | \$ 1,220                                     |
| Accounts receivable                            | 2,131  |
| Inventory                                      | 3,473  |
| Property and equipment                         | 1,655  |
| Intangible assets                              | 14,800                                       |
| Other assets                                   | 1,176  |
| Goodwill                                       | 22,160                                       |
| Accrued expenses                               | (4,478)                                      |
| Other current liabilities                      | (500)  |
| Deferred taxes & other non-current liabilities | (6,081)                                      |
| Total purchase price                           | 35,556                                       |
| Less cash acquired                             | (1,220)                                      |
| Net purchase price                             | <u>\$ 34,336</u>                             |

The amounts above represent the initial fair value estimates as of March 31, 2011 and are subject to subsequent adjustment as the Company obtains additional information during the measurement period and finalizes its fair value estimates. Any subsequent adjustments to these fair value estimates occurring during the measurement period will result in an adjustment to goodwill or income, as applicable.

The goodwill of \$22,160 arising from the LNX acquisition consists largely of the synergies and expansion of the Company's service offerings related to next generation radio frequency receivers for signal intelligence, communication intelligence as well as electronic attack applications expected from combining the operations of the Company and LNX.

Acquisition costs associated with the LNX acquisition were expensed as incurred. The Company incurred \$100 and \$407 acquisition costs and other related expenses for the three and nine months ended March 31, 2011, respectively.

For the three and nine months ended March 31, 2011, LNX revenues and net income included in the Company's consolidated statements of operations was immaterial. The Company has not furnished pro forma financial information relating to the LNX acquisition because such information is not material to the Company's financial results.

### **D. Multiple-Deliverable Arrangements**

The Company enters into multiple-deliverable arrangements that may include a combination of hardware components, related integration or other services. These arrangements generally do not include any performance-, cancellation-, termination- or refund-type provisions. Total revenue recognized under multiple-deliverable revenue arrangements in the three and nine months ended March 31, 2011 was approximately 42% and 48% of total revenues, respectively. Revenue recognized under multiple-deliverable arrangements in the three and nine months ended March 31, 2010 was approximately 42% and 52% of total revenues, respectively. The majority of the Company's multiple-deliverable revenue arrangements typically ship complete within the same quarter.

Each deliverable within the Company's multiple-deliverable revenue arrangements is accounted for as a separate unit of accounting under the guidance of the FASB Accounting Standards Update ("ASU") 2009-13 if both of the following criteria are met: the delivered item or items have value to the customer on a standalone



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basis; and for an arrangement that includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in the control of the Company. The Company considers a deliverable to have standalone value if the item is sold separately by the Company or another vendor or could be resold by the customer. Further, the Company's revenue arrangements generally do not include a general right of return relative to delivered products.

Deliverables not meeting the criteria for being a separate unit of accounting are combined with a deliverable that does meet that criterion. The appropriate allocation of arrangement consideration and recognition of revenue is then determined for the combined unit of accounting.

The Company allocates arrangement consideration to each deliverable in an arrangement based on its relative selling price. The Company determines the selling price of its deliverables based on the following hierarchy: (1) vendor-specific objective evidence ("VSOE") if available; (2) third-party evidence ("TPE") if VSOE is not available; and (3) best estimated selling price ("BESP") if neither VSOE nor TPE is available. The Company is not able to establish TPE due to the nature of the markets in which the Company competes, and, as such, the Company determines selling price using VSOE or BESP.

VSOE is generally limited to the price charged when the same or similar product is sold separately or, if applicable, the stated substantive renewal rate in the agreement. If a product or service is seldom sold separately, it is unlikely that the Company can determine VSOE for the product or service. The Company defines VSOE as a median price of recent standalone transactions that are priced within a narrow range, as defined by the Company.

The Company's determination of BESP involves a weighting of several factors based on the specific facts and circumstances of the arrangement. Specifically, the Company considers the cost to produce the deliverable, the anticipated margin on that deliverable, the selling price and gross margin for similar parts, the Company's ongoing pricing strategy and policies (as evident in the price list as established and updated on a regular basis), the value of any enhancements that have been built into the deliverable and the characteristics of the varying markets in which the deliverable is sold. The Company will determine BESP for deliverables in future agreements based on the specific facts and circumstances of each arrangement.

The Company analyzes the selling prices used in its allocation of arrangement consideration at a minimum on an annual basis. Selling prices are analyzed on a more frequent basis if a significant change in the Company's business necessitates a more timely analysis or if the Company experiences significant fluctuations in the selling prices of its products.

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### E. Net Earnings (Loss) Per Share

The following table sets forth the computation of basic and diluted net earnings (loss) per share:

|   | Three Months Ended<br>March 31, |                 | Nine Months Ended<br>March 31, |                 |
|---|---------------------------------|-----------------|--------------------------------|-----------------|
|   | 2011                            | 2010            | 2011                           | 2010            |
| Income from continuing operations                                   | \$ 5,378                        | \$ 3,699        | \$14,243                       | \$10,039        |
| Loss from discontinued operations, net of income taxes              | —                               | (423)           | (52)                           | (408)           |
| Gain on sale of discontinued operations, net of income taxes        | —                               | —               | —                              | 74              |
| Net income  | <u>\$ 5,378</u>                 | <u>\$ 3,276</u> | <u>\$14,191</u>                | <u>\$ 9,705</u> |
| Shares used in computation of net earnings (loss) per share—basic   | 26,272                          | 22,627          | 24,105                         | 22,509          |
| Effect of dilutive equity instruments                               | 1,052                           | 525             | 806                            | 412             |
| Shares used in computation of net earnings (loss) per share—diluted | <u>27,324</u>                   | <u>23,152</u>   | <u>24,911</u>                  | <u>22,921</u>   |
| Net earnings (loss) per share—basic                                 |                                 |                 |                                |                 |
| Income from continuing operations                                   | \$ 0.20                         | \$ 0.16         | \$ 0.59                        | \$ 0.45         |
| Loss from discontinued operations                                   | —                               | (0.02)          | —                              | (0.02)          |
| Gain on sale of discontinued operations                             | —                               | —               | —                              | —               |
| Net income  | <u>\$ 0.20</u>                  | <u>\$ 0.14</u>  | <u>\$ 0.59</u>                 | <u>\$ 0.43</u>  |
| Net earnings (loss) per share—diluted                               |                                 |                 |                                |                 |
| Income from continuing operations                                   | \$ 0.20                         | \$ 0.16         | \$ 0.57                        | \$ 0.44         |
| Loss from discontinued operations                                   | —                               | (0.02)          | —                              | (0.02)          |
| Gain on sale of discontinued operations                             | —                               | —               | —                              | —               |
| Net income  | <u>\$ 0.20</u>                  | <u>\$ 0.14</u>  | <u>\$ 0.57</u>                 | <u>\$ 0.42</u>  |

Weighted average equity instruments to purchase 650 and 950 shares of common stock were not included in the calculation of diluted net earnings per share for the three and nine months ended March 31, 2011, respectively, because the equity instruments were anti-dilutive. Weighted average equity instruments to purchase 1,679 and 1,925 shares of common stock were not included in the calculation of diluted net earnings per share for the three and nine months ended March 31, 2010, respectively, because the equity instruments were anti-dilutive.

On February 16, 2011, the Company completed a follow-on public stock offering of 5,578 shares of the Company's common stock, at a price to the public of \$17.75, generating net proceeds, after underwriting fees and expenses, of \$93,649. As a result, an additional 2,996 and 999 weighted average shares outstanding were included in the calculation of basic and diluted net earnings per shares for the three and nine months ended March 31, 2011, respectively.

### F. Marketable Securities and Related Receivables

The Company had no marketable securities and related receivables at March 31, 2011.

On June 30, 2010, the Company exercised the put option to sell its remaining \$18,025 auction rate securities ("ARS") balance to UBS at par value. The transaction settled on July 1, 2010. As a result of the transaction, the Company had a receivable balance of \$18,025 from UBS as of June 30, 2010. The receivable balance was considered a level 1 financial instrument and its fair value was equivalent to the cash that was received on July 1, 2010. The realized net gains on the ARS in fiscal 2010 were not material.

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### G. Inventory

Inventory is stated at the lower of cost (first-in, first-out) or market value, and consists of materials, labor and overhead. On a quarterly basis, the Company uses consistent methodologies to evaluate inventory for net realizable value. The Company reduces the value of inventory for excess and obsolete inventory, consisting of on-hand and non-cancelable on-order inventory in excess of estimated usage. The excess and obsolete inventory evaluation is based upon assumptions about future demand, product mix and possible alternative uses. Inventory was comprised of the following:

|                 | <u>March 31,<br/>2011</u> | <u>June 30,<br/>2010</u> |
|-----------------|---------------------------|--------------------------|
| Raw materials   | \$ 6,234                  | \$ 6,287                 |
| Work in process | 8,943                     | 6,326                    |
| Finished goods  | 4,102                     | 5,009                    |
| Total           | <u>\$ 19,279</u>          | <u>\$ 17,622</u>         |

There are no amounts in inventory relating to contracts having production cycles longer than one year.

### H. Property and Equipment

Property and equipment consisted of the following:

|                                     | <u>March 31,<br/>2011</u> | <u>June 30,<br/>2010</u> |
|-------------------------------------|---------------------------|--------------------------|
| Computer equipment and software     | \$ 49,355                 | \$ 50,680                |
| Furniture and fixtures              | 6,920                     | 6,795                    |
| Building and leasehold improvements | 1,593                     | 1,354                    |
| Machinery and equipment             | 4,641                     | 2,732                    |
| Vehicles                            | 119                       | —                        |
|                                     | 62,628                    | 61,561                   |
| Less: accumulated depreciation      | <u>(49,836)</u>           | <u>(51,263)</u>          |
|                                     | <u>\$ 12,792</u>          | <u>\$ 10,298</u>         |

Depreciation expense related to property and equipment for the three and nine months ended March 31, 2011 was \$1,660 and \$4,640, respectively. Depreciation expense related to property and equipment for the three and nine months ended March 31, 2010 was \$1,312 and \$3,790, respectively.

### I. Goodwill and Acquired Intangible Assets

The following table sets forth the changes in the carrying amount of goodwill for nine months ended March 31, 2011:

|   | <u>Amounts</u>  |
|---|-----------------|
| Balance at June 30, 2010                  | \$57,653        |
| Goodwill arising from the LNX acquisition | 22,160          |
| Balance at March 31, 2011                 | <u>\$79,813</u> |

In the nine months ended March 31, 2011, there were no triggering events, as defined by FASB ASC Topic 350, *Intangibles—Goodwill and Other* (“FASB ASC 350”), which required an interim goodwill impairment test. The Company performs its annual goodwill impairment test in the fourth quarter of each fiscal year.

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The Company determines its reporting units in accordance with FASB ASC 350, by assessing whether discrete financial information is available and if management regularly reviews the operating results of that component. Following this assessment, the Company determined that its reporting units are the same as its operating segments, ACS and MFS. As of June 30, 2010, ACS was the only reporting unit that had a goodwill balance, and as such, the annual impairment analysis was performed for this reporting unit only.

Acquired intangible assets consisted of the following:

|  | <u>Gross Carrying Amount</u> | <u>Accumulated Amortization</u> | <u>Net Carrying Amount</u> | <u>Weighted Average Useful Life</u> |
|--|------------------------------|---------------------------------|----------------------------|-------------------------------------|
| <b>MARCH 31, 2011</b>                        |                              |                                 |                            |                                     |
| Customer relationships                       | \$18,300                     | \$ (7,354)                      | \$10,946                   | 6.7 years                           |
| Licensing agreements, trademarks and patents | 4,045                        | (1,344)                         | 2,701                      | 5.5 years                           |
| Completed technologies                       | 2,900                        | (106)                           | 2,794                      | 6.0 years                           |
| Backlog                                      | 800                          | (101)                           | 699                        | 2.0 years                           |
| Non-compete agreements                       | 500                          | (253)                           | 247                        | 5.0 years                           |
|  | <u>\$26,545</u>              | <u>\$ (9,158)</u>               | <u>\$17,387</u>            |                                     |
| <b>JUNE 30, 2010</b>                         |                              |                                 |                            |                                     |
| Customer relationships                       | \$ 7,200                     | \$ (6,891)                      | \$ 309                     | 5.2 years                           |
| Licensing agreements, trademarks and patents | 1,300                        | (786)                           | 514                        | 8.0 years                           |
| Non-compete agreements                       | 500                          | (182)                           | 318                        | 5.0 years                           |
|  | <u>\$ 9,000</u>              | <u>\$ (7,859)</u>               | <u>\$ 1,141</u>            |                                     |

Estimated future amortization expense for acquired intangible assets remaining at March 31, 2011 is \$697 for fiscal 2011, \$2,810 for fiscal 2012, \$2,830 for fiscal 2013, \$2,826 for fiscal 2014, \$2,690 for fiscal 2015 and \$5,534 thereafter.

The following table summarizes the acquired intangible assets arising as a result of the LNX acquisition. LNX is included in the ACS reporting unit and operating segment. These assets are included in the Company's gross carrying amounts as of March 31, 2011.

| <u>Classification</u>  | <u>Amount</u>   | <u>Weighted Average Useful Life</u> |
|------------------------|-----------------|-------------------------------------|
| Customer relationships | \$11,100        | 7.7 years                           |
| Completed technologies | 2,900           | 6.0 years                           |
| Backlog                | 800             | 2.0 years                           |
| Total                  | <u>\$14,800</u> |                                     |

In the nine months ended March 31, 2011, the Company purchased two IP licenses for \$2,745. These licenses were recorded as intangible assets and are being amortized over one and five years.

## **J. Debt**

Debt consisted of the following:

|   | <u>March 31, 2011</u> | <u>June 30, 2010</u> |
|---|-----------------------|----------------------|
| Capital lease obligations                   | \$ 256                | \$ 142               |
| Less: current portion                       | (170)                 | (53)                 |
| Total non-current capital lease obligations | <u>\$ 86</u>          | <u>\$ 89</u>         |

The current portion of capital lease obligations is included in accrued expenses and the non-current portion is included in other non-current liabilities on the consolidated balance sheets at March 31, 2011 and June 30, 2010.

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### *Borrowings Under UBS Line of Credit*

As of June 30, 2010, there were no borrowings against the UBS line of credit. The UBS line of credit terminated on July 1, 2010 upon the settlement of the put option for the ARS.

### *Senior Secured Credit Facility*

#### *Original Loan Agreement*

On February 12, 2010, the Company entered into a loan and security agreement (the "Loan Agreement") with Silicon Valley Bank (the "Lender"). The Loan Agreement provided for a \$15,000 revolving line of credit (the "Revolver") and a \$20,000 acquisition line (the "Term Loan"). The Revolver was available for borrowing during a two-year period, with interest payable monthly and the principal due at the February 11, 2012 maturity of the Revolver. The Term Loan was available for up to three separate borrowings, with total borrowings not to exceed \$20,000, until February 11, 2012. The Term Loan had monthly interest and principal payments through the February 11, 2014 maturity of the Term Loan.

The interest rates include various rate options that are available to the Company. The rates are calculated using a combination of conventional base rate measures plus a margin over those rates. The base rates consist of LIBOR rates and prime rates. The actual rates will depend on the level of these underlying rates plus a margin based on the Company's leverage at the time of borrowing.

Borrowings are secured by a first-priority security interest in all of the Company's domestic assets, including intellectual property, but limited to 65% of the voting stock of foreign subsidiaries. The Company's MFS subsidiary is a guarantor and has granted a security interest in its assets in favor of the Lender. Following the acquisition of LNX Corporation, LNX also became a guarantor. The Lender may require Mercury Computer Systems Limited, the Company's United Kingdom subsidiary, or Nihon Mercury Computer Systems, K.K., the Company's Japanese subsidiary, to provide guarantees in the future if the cash or assets of such subsidiary exceed specified levels.

The Loan Agreement provided for conventional affirmative and negative covenants, including a minimum quick ratio of 1.5 to 1.0. If the Company had less than \$10,000 of cash equivalents in accounts with the Lender in excess of the Company's borrowings, the Company must also satisfy a \$15,000 minimum trailing-four-quarter cash-flow covenant. The minimum cash flow covenant is calculated as the Company's trailing-four quarter adjusted EBITDA as defined in the Loan Agreement. In addition, the Loan Agreement contains certain customary representations and warranties and limits the Company's and its subsidiaries' ability to incur liens, dispose of assets, carry out certain mergers and acquisitions, make investments and capital expenditures and defines events of default and limitations on the Company and its subsidiaries to incur additional debt.

#### *Amended Loan Agreement*

On March 30, 2011, the Company entered into an amendment to the Loan Agreement (as amended, the "Amended Loan Agreement") with the Lender. The amendment extended the term of the Revolver for an additional two years, to February 11, 2014, terminated the \$20,000 Term Loan under the original Loan Agreement, and increased the original \$15,000 Revolver to \$35,000. The amendment also included modifications to the financial covenants as summarized below.

The Amended Loan Agreement provides for conventional affirmative and negative covenants, including a minimum quick ratio of 1.0 to 1.0 and a \$15,000 minimum trailing four quarter cash flow covenant through and including June 30, 2012 (with \$17,500 of minimum cash flow required thereafter).

The Company has had no borrowings under the credit facility since inception and was in compliance with all covenants in the Amended Loan Agreement as of March 31, 2011.

## **K. Shareholders' Equity**

On February 16, 2011, the Company completed a follow-on public stock offering of 5,578 shares of common stock, which were sold at a price to the public of \$17.75. The follow-on public stock offering resulted in \$93,649 of net proceeds to the Company. The underwriting discount of \$4,950 and other expenses of \$402 related to the follow-on public stock offering were recorded as an offset to additional paid-in-capital.

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The Company intends to use the net proceeds of the follow-on public stock offering for general corporate purposes, which may include the acquisition of other companies or businesses, working capital and capital expenditures.

### L. Stock-Based Compensation

#### STOCK OPTION PLANS

The number of shares authorized for issuance under the Company's 2005 Stock Incentive Plan, as amended and restated (the "2005 Plan"), is 5,092 shares, which will be increased by any future cancellations, forfeitures or terminations (other than by exercise) under the Company's 1997 Stock Option Plan (the "1997 Plan"). On October 21, 2010, the Company's shareholders approved an increase in the number of shares authorized for issuance under the 2005 plan to 5,092, an increase of 1,000. The 2005 Plan provides for the grant of non-qualified and incentive stock options, restricted stock, stock appreciation rights and deferred stock awards to employees and non-employees. All stock options are granted with an exercise price of not less than 100% of the fair value of the Company's common stock at the date of grant and the options generally have a term of seven years. There were 2,508 shares available for future grant under the 2005 Plan at March 31, 2011.

The number of shares authorized for issuance under the 1997 Plan was 8,650 shares, of which 100 shares could be issued pursuant to restricted stock grants. The 1997 Plan provided for the grant of non-qualified and incentive stock options and restricted stock to employees and non-employees. All stock options were granted with an exercise price of not less than 100% of the fair value of the Company's common stock at the date of grant. The options typically vest over periods of zero to four years and have a maximum term of 10 years. Following shareholder approval of the 2005 Plan on November 14, 2005, the Company's Board of Directors directed that no further grants of stock options or other awards would be made under the 1997 Plan, and the 1997 Plan subsequently expired in June 2007. The foregoing does not affect any outstanding awards under the 1997 Plan, which remain in full force and effect in accordance with their terms.

#### EMPLOYEE STOCK PURCHASE PLAN

The number of shares authorized for issuance under the Company's 1997 Employee Stock Purchase Plan, as amended and restated ("ESPP"), is 1,100 shares. Under the ESPP, rights are granted to purchase shares of common stock at 85% of the lesser of the market value of such shares at either the beginning or the end of each six-month offering period. The ESPP permits employees to purchase common stock through payroll deductions, which may not exceed 10% of an employee's compensation as defined in the ESPP. There were 54 and 50 shares issued under the ESPP during the nine months ended March 31, 2011 and 2010, respectively. Shares available for future purchase under the ESPP totaled 199 at March 31, 2011.

#### STOCK OPTION AND AWARD ACTIVITY

The following table summarizes activity of the Company's stock option plans since June 30, 2009:

|                                      | Options Outstanding |                                    | Weighted Average<br>Remaining<br>Contractual Term<br>(Years) |
|--------------------------------------|---------------------|------------------------------------|--|
|                                      | Number of<br>Shares | Weighted Average<br>Exercise Price |  |
| <b>Outstanding at June 30, 2009</b>  | <b>2,980</b>        | <b>\$ 13.87</b>                    | <b>5.69</b>  |
| Granted                              | 56                  | 10.41                              |  |
| Exercised                            | (130)               | 7.72                               |  |
| Cancelled                            | (294)               | 17.38                              |  |
| <b>Outstanding at June 30, 2010</b>  | <b>2,612</b>        | <b>\$ 13.70</b>                    | <b>4.69</b>  |
| Granted                              | 77                  | 13.70                              |  |
| Exercised                            | (202)               | 8.18                               |  |
| Cancelled                            | (78)                | 16.88                              |  |
| <b>Outstanding at March 31, 2011</b> | <b>2,409</b>        | <b>\$ 14.06</b>                    | <b>4.14</b>  |

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The following table summarizes the status of the Company's non-vested restricted stock awards since June 30, 2009:

|                                      | Non-vested Restricted Stock Awards |  |
|--------------------------------------|------------------------------------|--|
|                                      | Number of Shares                   | Weighted Average Grant Date Fair Value |
| <b>Outstanding at June 30, 2009</b>  | <b>666</b>                         | <b>\$ 8.97</b>                         |
| Granted                              | 609                                | 10.21                                  |
| Vested                               | (325)                              | 10.39                                  |
| Forfeited                            | (122)                              | 8.22                                   |
| <b>Outstanding at June 30, 2010</b>  | <b>828</b>                         | <b>\$ 9.44</b>                         |
| Granted                              | 711                                | 12.23                                  |
| Vested                               | (190)                              | 10.99                                  |
| Forfeited                            | (45)                               | 9.09                                   |
| <b>Outstanding at March 31, 2011</b> | <b>1,304</b>                       | <b>\$ 10.75</b>                        |

STOCK-BASED COMPENSATION ASSUMPTIONS AND EXPENSE

The Company recognized the expense for its share-based payment plans in the consolidated statements of operations for the three and nine months ended March 31, 2011 and 2010 in accordance with FASB ASC 718, *Compensation—Stock Compensation* ("FASB ASC 718"), and did not capitalize any such costs on the consolidated balance sheets, as such costs that qualified for capitalization were not material. Under the fair value recognition provisions of FASB ASC 718, stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the service period. The following table presents share-based compensation expenses included in the Company's consolidated statement of operations:

|                                     | Three Months Ended<br>March 31, |               | Nine Months Ended<br>March 31, |                 |
|-------------------------------------|---------------------------------|---------------|--------------------------------|-----------------|
|                                     | 2011                            | 2010          | 2011                           | 2010            |
| Cost of revenues                    | \$ 63                           | \$ 56         | \$ 170                         | \$ 166          |
| Selling, general and administrative | 1,036                           | 687           | 3,590                          | 2,405           |
| Research and development            | 200                             | 200           | 462                            | 397             |
| Share-based compensation expense    | <u>\$ 1,299</u>                 | <u>\$ 943</u> | <u>\$ 4,222</u>                | <u>\$ 2,968</u> |

The following table sets forth the weighted-average key assumptions and fair value results for stock options granted during the three and nine months ended March 31, 2011 and 2010:

|  | Three Months Ended<br>March 31, |          | Nine Months Ended<br>March 31, |         |
|--|---------------------------------|----------|--------------------------------|---------|
|  | 2011                            | 2010     | 2011                           | 2010    |
| Weighted-average fair value of options granted | \$ — (*)                        | \$ — (*) | \$ 7.25                        | \$ 7.17 |
| Option life(1)                                 | — (*)                           | — (*)    | 5 years                        | 5 years |
| Risk-free interest rate(2)                     | — (*)                           | — (*)    | 1.3%                           | 2.4%    |
| Stock volatility(3)                            | — (*)                           | — (*)    | 63%                            | 87%     |
| Dividend rate                                  | — (*)                           | — (*)    | 0%                             | 0%      |

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The following table sets forth the weighted-average key assumptions and fair value results for employees' stock purchase rights during the three and nine months ended March 31, 2011 and 2010:

|  | Three Months Ended<br>March 31, |          | Nine Months Ended<br>March 31, |          |
|--|---------------------------------|----------|--------------------------------|----------|
|  | 2011                            | 2010     | 2011                           | 2010     |
| Weighted-average fair value of stock purchase rights granted | \$ 4.97                         | \$ 3.45  | \$ 3.95                        | \$ 3.80  |
| Option life(1)   | 6 months                        | 6 months | 6 months                       | 6 months |
| Risk-free interest rate(2)                                   | 0.2%                            | 0.2%     | 0.2%                           | 0.3%     |
| Stock volatility(3)  | 41%                             | 53%      | 53%                            | 82%      |
| Dividend rate  | 0%                              | 0%       | 0%                             | 0%       |

(1) The option life was determined based upon historical option activity.

(2) The risk-free interest rate for each grant is equal to the U.S. Treasury yield curve in effect at the time of grant for instruments with a similar expected life.

(3) The stock volatility for each grant is measured using the weighted average of historical daily price changes of the Company's common stock over the most recent period equal to the expected option life of the grant, the historical short-term trend of the option and other factors, such as expected changes in volatility arising from planned changes in the Company's business operations.

(\*) No stock options were granted by the Company during the three months ended March 31, 2011 and 2010.

### **M. Income Tax Expense**

The Company recorded tax expense of \$2,007 and a tax benefit \$2,235 for the three months ended March 31, 2011 and 2010, respectively, on income from continuing operations before taxes of \$7,385 and \$1,464 for the three months ended March 31, 2011 and 2010, respectively. The Company recorded tax expense of \$5,780 and a tax benefit of \$999 for the nine months ended March 31, 2011 and 2010, respectively, on income from continuing operations before taxes of \$20,023 and \$9,040 for the nine months ended March 31, 2011 and 2010, respectively. Income tax expense for the three and nine months ended March 31, 2011 differed from the federal statutory rate primarily due to the impact of research and development tax credits, the impact of a Section 199 manufacturing deduction, and favorable discrete items. Income tax expense for the three and nine months ended March 31, 2010 differed from the federal statutory rate primarily due to a partial release of the valuation allowance on deferred tax assets, several favorable discrete items which included a benefit from the Company's 2009 tax return filing concerning its ability to utilize certain net operating losses, a decrease of the Company's valuation allowance for uncertain tax positions, and the favorable settlement of issues regarding the Company's 2006 through 2008 tax return filings.

No material changes in the Company's unrecognized tax positions occurred during the three and nine months ended March 31, 2011. The Company does not expect there to be any material changes in its liabilities for unrecognized tax benefits within the next 12 months.

### **N. Restructuring Expense**

In July 2009, the Company announced a restructuring plan within the ACS business unit (the "Q1 FY10 Plan"). This plan was enacted following the completion of the Company's divestitures as part of the Company's reorganization of part of its business operations. There were no expenses recorded during three and nine months ended March 31, 2011 against the plan. The Company had a reversal of \$11 for unused outplacement costs in the three months ended March 31, 2010 and recorded expense of \$243 in the nine months ended March 31, 2010 against this plan. At March 31, 2011, the Company has no restructuring liability in the consolidated balance sheet.



## O. Operating Segment, Geographic Information and Significant Customers

Operating segments are defined as components of an enterprise evaluated regularly by the Company's senior management in deciding how to allocate resources and assess performance. The Company is organized in two business segments. These reportable segments were determined based upon the nature of the products offered to customers, the market characteristics of each operating segment and the Company's management structure:

- Advanced Computing Solutions ("ACS"). This business unit is focused on specialized, high performance computing solutions with key market segments, including defense, semiconductor, and commercial computing. This segment also provides software and customized design services to meet the specified requirements of military and commercial applications.
- Mercury Federal Systems ("MFS"). This business unit is focused on services and support work with the Department of Defense and federal intelligence and homeland security agencies, including designing and engineering new ISR capabilities to address present and emerging threats to U.S. forces.

The accounting policies of the reportable segments are the same as those described in "Note B: Summary of Significant Accounting Policies." The profitability measure employed by the Company and its chief operating decision maker ("CODM") for making decisions about allocating resources to segments and assessing segment performance was income (loss) from operations prior to stock compensation expense. As such, stock-based compensation expense has been excluded from each operating segments' income (loss) from operations below and reported separately to reconcile the reported segment income (loss) from operations to the consolidated operating income reported in the consolidated statements of operations. Additionally, asset information by reportable segment is not reported because the Company and its CODM utilize consolidated asset information when making business decisions. The following is a summary of the performance of the Company's operations by reportable segment:

|  | ACS               | MFS             | Stock<br>Compensation<br>Expense | Eliminations      | Total             |
|--|-------------------|-----------------|----------------------------------|-------------------|-------------------|
| <b>THREE MONTHS ENDED</b>              |                   |                 |                                  |                   |                   |
| <b>MARCH 31, 2011</b>                  |                   |                 |                                  |                   |                   |
| Net revenues to unaffiliated customers | \$ 56,364         | \$ 3,452        | \$ —                             | \$ 39             | \$ 59,855         |
| Intersegment revenues                  | 1,728             | —               | —                                | (1,728)           | —                 |
| Net revenues                           | <u>\$ 58,092</u>  | <u>\$ 3,452</u> | <u>\$ —</u>                      | <u>\$ (1,689)</u> | <u>\$ 59,855</u>  |
| Income (loss) from operations          | \$ 8,013          | \$ 410          | \$ (1,299)                       | \$ (125)          | \$ 6,999          |
| Depreciation and amortization expense  | \$ 2,313          | \$ 10           | \$ —                             | \$ —              | \$ 2,323          |
| <b>THREE MONTHS ENDED</b>              |                   |                 |                                  |                   |                   |
| <b>MARCH 31, 2010</b>                  |                   |                 |                                  |                   |                   |
| Net revenues to unaffiliated customers | \$ 41,152         | \$ 2,315        | \$ —                             | \$ 136            | \$ 43,603         |
| Intersegment revenues                  | 1,001             | —               | —                                | (1,001)           | —                 |
| Net revenues                           | <u>\$ 42,153</u>  | <u>\$ 2,315</u> | <u>\$ —</u>                      | <u>\$ (865)</u>   | <u>\$ 43,603</u>  |
| Income (loss) from operations          | \$ 2,625          | \$ (332)        | \$ (943)                         | \$ (198)          | \$ 1,152          |
| Depreciation and amortization expense  | \$ 1,739          | \$ 7            | \$ —                             | \$ —              | \$ 1,746          |
| <b>NINE MONTHS ENDED</b>               |                   |                 |                                  |                   |                   |
| <b>MARCH 31, 2011</b>                  |                   |                 |                                  |                   |                   |
| Net revenues to unaffiliated customers | \$ 158,732        | \$ 8,872        | \$ —                             | \$ (128)          | \$ 167,476        |
| Intersegment revenues                  | 4,499             | —               | —                                | (4,499)           | —                 |
| Net revenues                           | <u>\$ 163,231</u> | <u>\$ 8,872</u> | <u>\$ —</u>                      | <u>\$ (4,627)</u> | <u>\$ 167,476</u> |
| Income (loss) from operations          | \$ 23,474         | \$ (22)         | \$ (4,222)                       | \$ (468)          | \$ 18,762         |
| Depreciation and amortization expense  | \$ 5,911          | \$ 28           | \$ —                             | \$ —              | \$ 5,939          |
| <b>NINE MONTHS ENDED</b>               |                   |                 |                                  |                   |                   |
| <b>MARCH 31, 2010</b>                  |                   |                 |                                  |                   |                   |
| Net revenues to unaffiliated customers | \$ 127,592        | \$ 8,464        | \$ —                             | \$ 136            | \$ 136,192        |
| Intersegment revenues                  | 3,594             | 336             | —                                | (3,930)           | —                 |
| Net revenues                           | <u>\$ 131,186</u> | <u>\$ 8,800</u> | <u>\$ —</u>                      | <u>\$ (3,794)</u> | <u>\$ 136,192</u> |
| Income (loss) from operations          | \$ 11,257         | \$ 30           | \$ (2,968)                       | \$ (198)          | \$ 8,121          |
| Depreciation and amortization expense  | \$ 5,071          | \$ 21           | \$ —                             | \$ —              | \$ 5,092          |

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The geographic distribution of the Company's revenues from continuing operations is summarized as follows:

|  | <u>U.S.</u>       | <u>Europe</u>   | <u>Asia Pacific</u> | <u>Eliminations</u> | <u>Total</u>      |
|--|-------------------|-----------------|---------------------|---------------------|-------------------|
| <b>THREE MONTHS ENDED</b>              |                   |                 |                     |                     |                   |
| <b>MARCH 31, 2011</b>                  |                   |                 |                     |                     |                   |
| Net revenues to unaffiliated customers | \$ 58,441         | \$ 381          | \$ 1,033            | \$ —                | \$ 59,855         |
| Inter-geographic revenues              | 905               | 573             | 120                 | (1,598)             | —                 |
| Net revenues                           | <u>\$ 59,346</u>  | <u>\$ 954</u>   | <u>\$ 1,153</u>     | <u>\$ (1,598)</u>   | <u>\$ 59,855</u>  |
| <b>THREE MONTHS ENDED</b>              |                   |                 |                     |                     |                   |
| <b>MARCH 31, 2010</b>                  |                   |                 |                     |                     |                   |
| Net revenues to unaffiliated customers | \$ 38,466         | \$ 2,807        | \$ 2,330            | \$ —                | \$ 43,603         |
| Inter-geographic revenues              | 4,546             | 191             | 17                  | (4,754)             | —                 |
| Net revenues                           | <u>\$ 43,012</u>  | <u>\$ 2,998</u> | <u>\$ 2,347</u>     | <u>\$ (4,754)</u>   | <u>\$ 43,603</u>  |
| <b>NINE MONTHS ENDED</b>               |                   |                 |                     |                     |                   |
| <b>MARCH 31, 2011</b>                  |                   |                 |                     |                     |                   |
| Net revenues to unaffiliated customers | \$ 159,746        | \$ 2,743        | \$ 4,987            | \$ —                | \$ 167,476        |
| Inter-geographic revenues              | 4,781             | 1,735           | 240                 | (6,756)             | —                 |
| Net revenues                           | <u>\$ 164,527</u> | <u>\$ 4,478</u> | <u>\$ 5,227</u>     | <u>\$ (6,756)</u>   | <u>\$ 167,476</u> |
| <b>NINE MONTHS ENDED</b>               |                   |                 |                     |                     |                   |
| <b>MARCH 31, 2010</b>                  |                   |                 |                     |                     |                   |
| Net revenues to unaffiliated customers | \$ 121,455        | \$ 7,157        | \$ 7,580            | \$ —                | \$ 136,192        |
| Inter-geographic revenues              | 10,601            | 311             | 152                 | (11,064)            | —                 |
| Net revenues                           | <u>\$ 132,056</u> | <u>\$ 7,468</u> | <u>\$ 7,732</u>     | <u>\$ (11,064)</u>  | <u>\$ 136,192</u> |

Foreign revenue is based on the country in which the Company's legal subsidiary is domiciled.

The geographic distribution of the Company's long-lived assets from continuing operations is summarized as follows:

|                | <u>U.S.</u> | <u>Europe</u> | <u>Asia Pacific</u> | <u>Eliminations</u> | <u>Total</u> |
|----------------|-------------|---------------|---------------------|---------------------|--------------|
| March 31, 2011 | \$16,671    | \$ 27         | \$ 666              | \$ —                | \$17,364     |
| June 30, 2010  | \$13,384    | \$ 21         | \$ 716              | \$ —                | \$14,121     |

Identifiable long-lived assets exclude goodwill, intangible assets, deferred tax accounts, and investments in other entities.

Customers comprising 10% or more of the Company's revenues for the periods shown below are as follows:

|                              | <u>Three Months Ended</u> |             | <u>Nine Months Ended</u> |             |
|------------------------------|---------------------------|-------------|--------------------------|-------------|
|                              | <u>2011</u>               | <u>2010</u> | <u>2011</u>              | <u>2010</u> |
| Northrop Grumman Corporation | 22%                       | *           | 20%                      | 12%         |
| Raytheon Company             | 14%                       | 27%         | 18%                      | 25%         |
| KLA-Tencor Corporation       | 13%                       | *           | 10%                      | *           |
| Lockheed Martin Corporation  | *                         | *           | 11%                      | *           |
|                              | <u>49%</u>                | <u>27%</u>  | <u>59%</u>               | <u>37%</u>  |

\* Indicates that the amount is less than 10% of the Company's revenues for the respective period.

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Although the Company typically has several defense customers from which it derives 10% or more of its revenue, the sales to each of these customers are spread across multiple programs and platforms. For the three and nine months ended March 31, 2011, no programs individually comprised 10% or more of the Company's revenues. For the three months ended March 31, 2010, only one program individually comprised 10% or more of the Company's revenue, the Joint Strike Fighter program at 14%. In the nine months ended March 31, 2010, there were no programs that individually comprised 10% or more of the Company's revenue.

### **P. Commitments and Contingencies**

#### LEGAL CLAIMS

The Company is subject to legal proceedings, claims and tax audits that arise in the ordinary course of business. The Company does not believe the outcome of these matters will have a material adverse effect on its financial position, results of operations or cash flows.

#### INDEMNIFICATION OBLIGATIONS

The Company's standard product sales and license agreements entered into in the ordinary course of business typically contain an indemnification provision pursuant to which the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with any patent, copyright or other intellectual property infringement claim by any third party with respect to the Company's products. Such provisions generally survive termination or expiration of the agreements. The potential amount of future payments the Company could be required to make under these indemnification provisions is, in some instances, unlimited.

In connection with the divestitures of the Company's former VI, VSG, Biotech and ES/PS businesses, the Company provided indemnification to the buyers of the respective businesses. The Company's indemnification obligations generally cover the buyers for damages resulting from breaches of representations, warranties and covenants contained in the applicable purchase and sale agreement and generally cover pre-closing tax liabilities of the divested businesses. In addition, the Company also agreed to indemnify the buyer of the VI business for certain post-closing employee severance expenses. The Company's indemnification obligations related to divested businesses are generally subject to caps and expire at various defined future dates.

#### PURCHASE COMMITMENTS

In September 2006, the Company entered into a supply agreement with a third-party vendor to purchase certain inventory parts that went "end of life." This supply agreement, as subsequently amended, commits the vendor to acquiring and storing approximately \$6,500 of inventory until August 31, 2012 and allows the Company to place orders for the inventory four times a year. Upon the earlier of January 31, 2007 or completion of the wafer fabrication process, the Company was required to and paid approximately \$1,900 of the \$6,500. Further, upon expiration of the agreement on August 31, 2012, if the Company does not purchase the full \$6,500 in inventory, it may be required to pay a penalty equal to 35% of the remaining inventory balance. As of March 31, 2011, the remaining minimum commitment related to this agreement was \$1,642, which is the 35% penalty on the remaining inventory balance. While the Company expects to continue to purchase this inventory through the expiration of the agreement, it does not expect to purchase the full \$6,500 noted above. As of March 31, 2011, the Company has recorded an accrued liability of approximately \$562 for the 35% penalty it anticipates on paying for unpurchased inventory.

The Company's purchase obligations typically represent open non-cancelable purchase commitments for certain inventory components and services used in normal operations. At March 31, 2011, the purchase commitments covered by these agreements were for less than one year and aggregated approximately \$16,091.

### **Q. Subsequent Events**

The Company has evaluated subsequent events from the date of the consolidated balance sheet through the date the consolidated financial statements were issued, no subsequent events were noted.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### FORWARD-LOOKING STATEMENTS

From time to time, information provided, statements made by our employees or information included in our filings with the Securities and Exchange Commission may contain statements that are not historical facts but that are "forward-looking statements," which involve risks and uncertainties. The words "may," "will," "would," "should," "could," "plan," "expect," "anticipate," "continue," "estimate," "project," "intend," "likely," "probable," and similar expressions are intended to identify forward-looking statements regarding events, conditions and financials trends that may affect our future plans of operations, business strategy, results of operations and financial position. These forward-looking statements, which include those related to our strategic plans, business outlook, and future business and financial performance, involve risks and uncertainties that could cause actual results to differ materially from those projected or anticipated. Such risks and uncertainties include, but are not limited to, general economic and business conditions, including unforeseen weakness in the Company's markets, effects of continued geopolitical unrest and regional conflicts, competition, changes in technology and methods of marketing, delays in completing engineering and manufacturing programs, changes in customer order patterns, changes in product mix, continued success in technological advances and delivering technological innovations, continued funding of defense programs, the timing of such funding, changes in the U.S. Government's interpretation of federal procurement rules and regulations, market acceptance of the Company's products, shortages in components, production delays due to performance quality issues with outsourced components, inability to fully realize the expected benefits from acquisitions and divestitures or delays in realizing such benefits, challenges in integrating acquired businesses and achieving anticipated synergies, changes to export regulations, increases in tax rates, changes to generally accepted accounting principles, difficulties in retaining key employees and customers, unanticipated costs under fixed-price service and system integration engagements, and various other factors beyond our control. These risks and uncertainties also include such additional risk factors as set forth under Part I-Item 1A (Risk Factors) in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2010. We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. We undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made.

Unless the context otherwise requires, all references to "Mercury," "we," "our," "us" or "our company" in this report refer to Mercury Computer Systems, Inc., a Massachusetts corporation, and its consolidated subsidiaries.

### OVERVIEW

We design, manufacture and market commercially developed, high-performance embedded, real-time digital signal and image processing systems and software for specialized defense and commercial computing markets. Our solutions play a critical role in a wide range of applications, transforming sensor data to information for analysis and interpretation. In military reconnaissance and surveillance platforms, our systems process real-time radar, video, sonar and signals intelligence data. Our systems are also used in semiconductor imaging applications, including photomask generation and wafer inspection. We also provide radio frequency products for enhanced communications capabilities in military and commercial applications. Additionally, we entered the defense prime contracting market space in fiscal 2008 through the creation of our wholly-owned subsidiary, Mercury Federal Systems, Inc. ("MFS"), to focus on reaching the federal intelligence and homeland security agencies.

Our products and solutions address mission-critical requirements within the defense industry for C4ISR (command, control, communications, computers, intelligence, surveillance and reconnaissance) and electronic warfare, or EW, systems and services, which target several markets including maritime defense, airborne reconnaissance, ballistic missile defense, ground mobile and force protection systems, and tactical communications and network systems. Our products are deployed in over 300 different programs across 26 different prime defense contractors.

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As of March 31, 2011, we had 612 employees and, for the three and nine months ended March 31, 2011, we had revenues of \$59.9 million and \$167.5 million and income from continuing operations of \$5.4 million and \$14.2 million, respectively.

Our operations are organized in the following two business units:

- *Advanced Computing Solutions (“ACS”)*. This business unit is focused on specialized, high performance signal processing solutions that encompass signal acquisition, digitalization, computing, storage and communications, targeted to key market segments including defense, semiconductor, communications and other commercial computing. ACS’s commercially developed, open system architecture solutions span the full range of embedded technologies from board level products to fully integrated subsystems. Our products utilize leading-edge processor technologies architected to address highly data-intensive applications that include signal, sensor and image processing within environmentally constrained military and commercial applications. These products are highly optimized for size, weight and power, as well as for the performance and ruggedization requirements of our customers. Customized design and systems integration services extend our capabilities to tailor solutions to meet the specialized requirements of our customers. Our recently acquired subsidiary, LNX Corporation (“LNX”), is included in the ACS business unit. In fiscal 2011, ACS has accounted for 95% of our total net revenues.
- *Mercury Federal Systems (“MFS”)*. This business unit is focused on services and support work with the Department of Defense, or the DoD, and federal intelligence and homeland security agencies, including designing and engineering new intelligence, surveillance and reconnaissance, or ISR, capabilities to address present and emerging threats to U.S. forces. MFS is part of our long-term strategy to expand our software and services presence and pursue growth in platform-ready ISR subsystems, particularly those with classified intellectual property. MFS offers a wide range of engineering architecture and design services that enable clients to deploy leading edge computing capabilities for ISR systems on an accelerated time cycle. The business unit enables us to combine classified intellectual property with the commercially developed application-ready subsystems being developed by ACS, providing customers with platform-ready, affordable ISR subsystems. In fiscal 2011, MFS has accounted for 5% of our total net revenues.

Since we are an OEM supplier to our commercial markets and conduct business with our defense customers via commercial items, requests by customers are a primary driver of revenue fluctuations from quarter to quarter. Customers specify delivery date requirements that coincide with their need for our products. Because these customers may use our products in connection with a variety of defense programs or other projects of different sizes and durations, a customer’s orders for one quarter generally do not indicate a trend for future orders by that customer. Additionally, order patterns do not necessarily correlate amongst customers and, therefore, we generally cannot identify sequential quarterly trends, even within our business units.

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**RESULTS OF OPERATIONS:**

**Three months ended March 31, 2011 compared to the three months ended March 31, 2010**

The following tables set forth, for the three month periods indicated, financial data from the consolidated statements of operations:

| <u>(In thousands)</u>                                  | <u>March 31,<br/>2011</u> | <u>As a % of<br/>Total Net<br/>Revenue</u> | <u>March 31,<br/>2010</u> | <u>As a % of<br/>Total Net<br/>Revenue</u> |
|--|---------------------------|--|---------------------------|--|
| Net revenues   | \$ 59,855                 | 100.0%                                     | \$ 43,603                 | 100.0%                                     |
| Cost of revenues                                       | 26,973                    | 45.1                                       | 18,800                    | 43.1                                       |
| Gross margin   | 32,882                    | 54.9                                       | 24,803                    | 56.9                                       |
| Operating expenses:                                    |                           |  |                           |  |
| Selling, general and administrative                    | 14,437                    | 24.1                                       | 12,538                    | 28.8                                       |
| Research and development                               | 10,683                    | 17.8                                       | 10,629                    | 24.4                                       |
| Impairment of long-lived assets                        | —                         | —  | 61                        | 0.1  |
| Amortization of acquired intangible assets             | 663                       | 1.1  | 434                       | 1.0  |
| Restructuring  | —                         | —  | (11)                      | —  |
| Acquisition costs and other related expenses           | 100                       | 0.2  | —                         | —  |
| Total operating expenses                               | 25,883                    | 43.2                                       | 23,651                    | 54.3                                       |
| Income from operations                                 | 6,999                     | 11.7                                       | 1,152                     | 2.6  |
| Other income, net                                      | 386                       | 0.6  | 312                       | 0.8  |
| Income from continuing operations before income taxes  | 7,385                     | 12.3                                       | 1,464                     | 3.4  |
| Income tax expense (benefit)                           | 2,007                     | 3.3  | (2,235)                   | (5.1)                                      |
| Income from continuing operations                      | 5,378                     | 9.0  | 3,699                     | 8.5  |
| Loss from discontinued operations, net of income taxes | —                         | —  | (423)                     | (1.0)                                      |
| Net income   | <u>\$ 5,378</u>           | <u>9.0%</u>                                | <u>\$ 3,276</u>           | <u>7.5%</u>                                |

REVENUES

| <u>(In thousands)</u> | <u>March 31,<br/>2011</u> | <u>March 31,<br/>2010</u> | <u>\$ Change</u> | <u>% Change</u> |
|-----------------------|---------------------------|---------------------------|------------------|-----------------|
| ACS                   | \$ 56,364                 | \$ 41,152                 | \$ 15,212        | 37%             |
| MFS                   | 3,452                     | 2,315                     | 1,137            | 49%             |
| Other                 | 39                        | 136                       | (97)             | (71%)           |
| Total revenues        | <u>\$ 59,855</u>          | <u>\$ 43,603</u>          | <u>\$ 16,252</u> | 37%             |

Total revenues increased \$16.3 million, or 37%, to \$59.9 million during the three months ended March 31, 2011 as compared to the comparable period in fiscal 2010. International revenues represented approximately 2% and 12% of total revenues during the three months ended March 31, 2011 and 2010, respectively. The decrease in international revenues during the three months ended March 31, 2011 was primarily driven by both the sales to a commercial customer in the European region during the 2010 period whose sales were serviced by our U.K. operations during the 2010 period versus our U.S. operations during the 2011 period, and reduced sales to a commercial customer in the Asia Pacific region during 2011.

Net ACS revenues increased \$15.2 million, or 37%, to \$56.4 million during the three months ended March 31, 2011 as compared to the same period in fiscal 2010. This increase was primarily driven by an increase

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in sales to defense customers of \$8.8 million, mostly driven by an increase in the radar and sonar markets, partially offset by a slight decrease in electronic warfare applications. The increase was also due to a \$6.4 million increase in sales to commercial customers, primarily relating to an increase in the semiconductor market, slightly offset by a decrease in sales in the commercial computing market. We expect that sales to commercial customers will decrease due to recent information from ASML that our system has been designed out of their products.

Net MFS revenues increased \$1.1 million, or 49%, to \$3.5 million during the three months ended March 31, 2011 as compared to the same period in fiscal 2010. This change was primarily driven by a \$1.2 million increase in revenue relating to a persistent ISR development program.

Net Other revenue decreased \$0.1 million during the three months ended March 31, 2011 as compared to the same period in fiscal 2010. Net Other revenue is attributable to development programs where the revenue recognized in our two business segments under contract accounting is either greater or less than revenue recognized on a consolidated basis.

### GROSS MARGIN

Gross margin was 54.9% for the three months ended March 31, 2011, a decrease of 200 basis points from the 56.9% gross margin achieved during the same period in fiscal 2010. The decrease in gross margin was primarily due to a \$0.5 million increase in charges for work performed by our engineers on customer funded efforts and a \$0.4 million increase in warranty costs.

### SELLING, GENERAL AND ADMINISTRATIVE

Selling, general and administrative expenses increased \$1.9 million, or 15%, to \$14.4 million during the three months ended March 31, 2011 compared to \$12.5 million during the same period in fiscal 2010. The increase was primarily due to a \$1.7 million increase in employee compensation expense, including stock-based compensation expense, driven by a 51 person increase in headcount, company-wide pay increases and variable compensation increases. Additionally, there was a \$0.2 million increase in business meeting and travel expenses. Selling, general and administrative expenses decreased as a percentage of revenues to 24.1% during the three months ended March 31, 2011 from 28.8% during the same period in fiscal 2010. We seek to continue improving our operating leverage by maintaining our selling, general and administrative expenses growth rate well below our revenue growth rate.

### RESEARCH AND DEVELOPMENT

Research and development expenses increased \$0.1 million, or 1%, to \$10.7 million during the three months ended March 31, 2011 compared to \$10.6 million during the same period in fiscal 2010. The increase was primarily the result of a \$0.7 million increase in employee compensation expense driven by a 21 person increase in headcount, company-wide pay increases and variable compensation increases. This increase was primarily offset by fewer purchases of prototype materials to support long-term construction contracts nearing the end of their development stage. Research and development continues to be a focus of our business with approximately 17.8% of our revenues dedicated to research and development activities during the three months ended March 31, 2011 and approximately 24.4% of our revenues dedicated to such activities during the same period in fiscal 2010. We have continued to improve the leverage of our research and development investments.

### IMPAIRMENT OF LONG-LIVED ASSETS

Impairment of long-lived assets was \$0.1 million in the three months ended March 31, 2010, as we wrote down the remaining balance of an intangible asset due the cancellation of a license agreement. There were no impairment charges recorded in the three months ended March 31, 2011.

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### AMORTIZATION OF ACQUIRED INTANGIBLE ASSETS

Amortization of acquired intangible assets increased to \$0.7 million during the three months ended March 31, 2011 compared to \$0.4 million during the same period in fiscal 2010, primarily due to amortization of intangible assets from the LNX acquisition completed during the third quarter of fiscal 2011.

### ACQUISITION COSTS AND OTHER RELATED EXPENSES

We incurred \$0.1 million of acquisition costs and other related expenses during the three months ended March 31, 2011, in connection with the acquisition of LNX Corporation, which was concluded on January 12, 2011.

### INTEREST INCOME

Interest income for the three months ended March 31, 2011 decreased by \$0.2 million to nil compared to the same period in fiscal 2010. The decrease was attributable to the sale of our marketable securities at the end of fiscal 2010. Our marketable securities held during fiscal 2010 yielded higher interest rates than the money market funds and U.S. treasury securities in which our cash and cash equivalents were invested during the three months ended March 31, 2011. We held no marketable securities during the three months ended March 31, 2011.

### INTEREST EXPENSE

Interest expense for the three months ended March 31, 2011 decreased by \$0.1 million to nil compared to the same period in fiscal 2010. The decrease was the result of the repayment of our borrowings against our auction rate securities ("ARS") at the end of fiscal 2010. We did not have any debt during the three months ended March 31, 2011, other than capital lease obligations.

### OTHER INCOME (EXPENSE)

Other net income increased \$0.1 million, or 48%, to \$0.4 million during the three months ended March 31, 2011, as compared to the same period in fiscal 2010. Other income (expense) primarily consists of \$0.3 million in amortization of the gain on the sale leaseback of our corporate headquarters located in Chelmsford, Massachusetts and foreign currency exchange gains and losses.

### INCOME TAX PROVISION (BENEFIT)

We recorded a provision for income taxes of \$2.0 million during the three months ended March 31, 2011 as compared to a benefit of \$2.2 million during the same period in fiscal 2010. Our provision for income taxes for the three months ended March 31, 2011 differed from the federal statutory tax rate of 35% primarily due to the impact of research and development tax credits, the impact of a Section 199 manufacturing deduction, and favorable discrete items. Our provision for income taxes for the three months ended March 31, 2010 differed from the federal statutory rate primarily due to a partial release of the valuation allowance on deferred tax assets, several favorable discrete items which included a benefit from our 2009 tax return filing concerning our ability to utilize certain net operating losses, a decrease of our valuation allowance for uncertain tax positions and a decrease due to the favorable settlement of issues regarding our 2006 through 2008 tax return filings.

### SEGMENT OPERATING RESULTS

Operating profit for ACS increased \$5.4 million during the three months ended March 31, 2011 to \$8.0 million as compared to \$2.6 million for the same period in fiscal 2010. The increase in operating profit was primarily driven by increased revenues of \$15.2 million, which drove an improvement in gross margin. This improvement was partially offset by increases in operating expenses necessary to grow the business. However, operating expenses declined as a percent of revenue as we continued to improve our operating leverage.



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Results from operations of the MFS segment increased \$0.7 million during the three months ended March 31, 2011 to an operating profit of \$0.4 million as compared to an operating loss of \$0.3 million for the same period in fiscal 2010. This increase was related to an increase in revenue relating to an ISR development program. See Note O to our consolidated financial statements included in this report for more information regarding our operating segments and geographic information.

### Nine months ended March 31, 2011 compared to the nine months ended March 31, 2010

The following tables set forth, for the nine month periods indicated, financial data from the consolidated statements of operations:

| <u>(In thousands)</u>  | <u>March 31,<br/>2011</u> | <u>As a % of<br/>Total Net<br/>Revenue</u> | <u>March 31,<br/>2010</u> | <u>As a % of<br/>Total Net<br/>Revenue</u> |
|--|---------------------------|--|---------------------------|--|
| Net revenues   | \$ 167,476                | 100.0%                                     | \$ 136,192                | 100.0%                                     |
| Cost of revenues   | 72,294                    | 43.2                                       | 58,222                    | 42.7                                       |
| Gross margin   | 95,182                    | 56.8                                       | 77,970                    | 57.3                                       |
| Operating expenses:  |                           |  |                           |  |
| Selling, general and administrative                          | 42,653                    | 25.5                                       | 37,367                    | 27.4                                       |
| Research and development                                     | 32,061                    | 19.1                                       | 30,726                    | 22.5                                       |
| Impairment of long-lived assets                              | —                         | —  | 211                       | 0.2  |
| Amortization of acquired intangible assets                   | 1,299                     | 0.8  | 1,302                     | 1.0  |
| Restructuring  | —                         | —  | 243                       | 0.2  |
| Acquisition costs and other related expenses                 | 407                       | 0.2  | —                         | —  |
| Total operating expenses                                     | 76,420                    | 45.6                                       | 69,849                    | 51.3                                       |
| Income from operations                                       | 18,762                    | 11.2                                       | 8,121                     | 6.0  |
| Other income, net  | 1,261                     | 0.8  | 919                       | 0.6  |
| Income from continuing operations before income taxes        | 20,023                    | 12.0                                       | 9,040                     | 6.6  |
| Income tax expense (benefit)                                 | 5,780                     | 3.5  | (999)                     | (0.8)                                      |
| Income from continuing operations                            | 14,243                    | 8.5  | 10,039                    | 7.4  |
| Loss from discontinued operations, net of income taxes       | (52)                      | —  | (408)                     | (0.3)                                      |
| Gain on sale of discontinued operations, net of income taxes | —                         | —  | 74                        | —  |
| Net income   | <u>\$ 14,191</u>          | <u>8.5%</u>                                | <u>\$ 9,705</u>           | <u>7.1%</u>                                |

### REVENUES

| <u>(In thousands)</u> | <u>March 31,<br/>2011</u> | <u>March 31,<br/>2010</u> | <u>\$ Change</u> | <u>% Change</u> |
|-----------------------|---------------------------|---------------------------|------------------|-----------------|
| ACS                   | \$ 158,732                | \$ 127,592                | \$ 31,140        | 24%             |
| MFS                   | 8,872                     | 8,464                     | 408              | 5%              |
| Other                 | (128)                     | 136                       | (264)            | (194%)          |
| Total revenues        | <u>\$ 167,476</u>         | <u>\$ 136,192</u>         | <u>\$ 31,284</u> | <u>23%</u>      |

Total revenues increased \$31.3 million, or 23%, to \$167.5 million during the nine months ended March 31, 2011 as compared to the same period in fiscal 2010. International revenues represented approximately 5% and 11% of total revenues during the nine months ended March 31, 2011 and 2010, respectively. The decrease in international revenues during the nine months ended March 31, 2011 was primarily driven by both the sales to a commercial customer in the European region during the 2010 period whose sales were serviced by the U.K. operations during the 2010 period versus our U.S. operations during the 2011 period, and reduced sales to a commercial customer in the Asia Pacific region during 2011.

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Net ACS revenues increased \$31.1 million, or 24%, to \$158.7 million during the nine months ended March 31, 2011 as compared to the same period in fiscal 2010. This increase was primarily driven by an increase in sales to defense customers of \$15.8 million, mostly driven by an increase in sales in the radar market, partially offset by a decrease in sales in electronic warfare applications. The increase was also due to a \$15.3 million increase in sales to commercial customers, primarily relating to an increase in sales in the semiconductor market, slightly offset by a decrease in the commercial computing market. We expect that sales to commercial customers will decrease due to recent information from ASML that our system has been designed out of their products.

Net MFS revenues increased \$0.4 million, or 5%, to \$8.9 million, during the nine months ended March 31, 2011 as compared to the same period in fiscal 2010. This change was primarily driven by a \$1.5 million increase in revenue relating to an ISR development program, partially offset by the completion of fiscal 2010 development programs.

Net Other revenue decreased \$0.3 million during the three months ended March 31, 2011 as compared to the same period in fiscal 2010. Net Other revenue is attributable to development programs where the revenue recognized in our two business segments under contract accounting is either greater or less than revenue recognized on a consolidated basis.

### GROSS MARGIN

Gross margin was 56.8% for the nine months ended March 31, 2011, a decrease of 50 basis points from the 57.3% gross margin achieved during the same period in fiscal 2010. The decrease in gross margin was primarily due to a decrease in direct margin resulting from a shift in product mix and an increase in other cost of goods sold due to additional headcount in the customer service and sustained engineering groups, partially offset by higher revenues.

### SELLING, GENERAL AND ADMINISTRATIVE

Selling, general and administrative expenses increased \$5.3 million, or 14%, to \$42.7 million during the nine months ended March 31, 2011 compared to \$37.4 million during the same period in fiscal 2010. The increase was primarily due to a \$4.6 million increase in employee compensation expense, including stock-based compensation, driven by a 51 person increase in headcount, company-wide pay increases and variable compensation increases. Additionally, there was a \$0.4 million increase in depreciation expense. Selling, general and administrative expenses decreased as a percentage of revenues to 25.5% during the nine months ended March 31, 2011 from 27.4% during the same period in fiscal 2010. We have continued to improve our operating leverage by maintaining our selling, general and administrative expense year over year growth rate well below our revenue growth rate and seek to continue this trend.

### RESEARCH AND DEVELOPMENT

Research and development expenses increased \$1.4 million, or 4%, to \$32.1 million during the nine months ended March 31, 2011 compared to \$30.7 million during the same period in fiscal 2010. The increase was primarily the result of a \$1.5 million increase in employee compensation expense, including stock-based compensation expense, driven by a 21 person increase in headcount, company-wide pay increases and variable compensation increases. Additionally, there was a \$0.8 million increase in IT and facility support expense and a \$0.2 million increase in depreciation expense. Additionally, there was less time spent on billable projects by our engineers by \$0.4 million. These increases were partially offset by fewer purchases of prototype materials to support long-term construction contracts nearing the end of their development stage. Research and development continues to be a focus of our business with approximately 19.1% of our revenues dedicated to research and

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development activities during the nine months ended March 31, 2011 and approximately 22.5% of our revenues dedicated to such activities during the same period in fiscal 2010. We have continued to improve the leverage of our research and development investments.

### IMPAIRMENT OF LONG-LIVED ASSETS

We recorded \$0.2 million in impairment charges in the nine months ended March 31, 2010. These charges were the result of the \$0.1 million impairment of the remaining value of a terminated license agreement and \$0.1 million for the impairment of the fair value of the shares we received as compensation in the sale of our former Biotech business.

There were no impairment charges recorded in the nine months ended March 31, 2011.

### AMORTIZATION OF ACQUIRED INTANGIBLE ASSETS

Amortization of acquired intangible assets remained relatively flat at \$1.3 million for the nine months ended March 31, 2011 and 2010 due to increases in the nine months ended March 31, 2011 associated with our LNX acquisition of \$0.4 million and \$0.4 million for acquired licenses, offset by certain assets becoming fully amortized during the first quarter of fiscal 2011.

### RESTRUCTURING EXPENSE

Restructuring expense decreased \$0.2 million to nil during the nine months ended March 31, 2011 as compared to the comparable period in fiscal 2010. Restructuring activities during the nine months ended March 31, 2010 were primarily due to the elimination of four positions under our restructuring plan within the ACS business unit (the "Q1 FY10 Plan"), which was enacted in July 2009 following the completion of our divestitures as part of the reorganization of our business operations.

### ACQUISITION COSTS AND OTHER RELATED EXPENSES

We incurred \$0.4 million of acquisition costs and other related expenses during the nine months ended March 31, 2011, which consist of transaction costs incurred in connection with the acquisition of LNX Corporation, which was concluded on January 12, 2011.

### INTEREST INCOME

Interest income for the nine months ended March 31, 2011 decreased by \$0.4 million to nil compared to the same period in fiscal 2010. The decrease was attributable to the sale of our marketable securities at the end of fiscal 2010. Our marketable securities held during fiscal 2010 yielded higher interest rates than the money market funds in which our cash was primarily invested during the nine months ended March 31, 2011. We held no marketable securities during the nine months ended March 31, 2011.

### INTEREST EXPENSE

Interest expense for the nine months ended March 31, 2011 decreased by \$0.2 million to \$0.1 million compared to the same period in fiscal 2010. The decrease was the result of the repayment of our borrowings against our ARS at the end of fiscal 2010. We did not have any debt during the nine months ended March 31, 2011, other than capital lease obligations.

### OTHER INCOME (EXPENSE)

Other net income increased \$0.5 million, or 64%, to \$1.3 million during the nine months ended March 31, 2011 as compared to the same period in fiscal 2010. Other income (expense) primarily consists of \$0.9 million in

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amortization of the gain on the sale leaseback of our corporate headquarters located in Chelmsford, Massachusetts and foreign currency exchange gains and losses. The \$0.5 million increase is primarily associated with a \$0.4 million foreign currency exchange gain during the nine months ended March 31, 2011 as compared to a \$0.3 million foreign currency exchange loss for the same period in fiscal 2010. The foreign currency exchange gain was largely driven by strengthening of the British pound and the Japanese yen against the U.S. dollar.

### INCOME TAX PROVISION (BENEFIT)

We recorded a provision for income taxes of \$5.8 million during the nine months ended March 31, 2011 as compared to a tax benefit of \$1.0 million during the same period in fiscal 2010. Our provision for income taxes for the nine months ended March 31, 2011 differed from the federal statutory tax rate of 35% primarily due to the impact of research and development tax credits, the impact of a Section 199 manufacturing deduction, and favorable discrete items. Our provision for income taxes for the nine months ended March 31, 2010 differed from the federal statutory rate primarily due to a partial release of the valuation allowance on deferred tax assets, several favorable discrete items which included a benefit from our 2009 tax return filing concerning our ability to utilize certain net operating losses, a decrease of our valuation allowance for uncertain tax positions and a decrease due to the favorable settlement of issues regarding our 2006 through 2008 tax return filings.

### SEGMENT OPERATING RESULTS

Operating profit for ACS increased \$12.2 million during the nine months ended March 31, 2011 to \$23.5 million as compared to \$11.3 million for the same period in fiscal 2010. The increase in operating profit was primarily driven by increased revenues of \$31.1 million. This improvement was partially offset by lower margins and increases in operating expenses necessary to grow the business. However, operating expenses declined as a percent of revenue as we continued to improve our operating leverage.

Results from operations of the MFS segment decreased \$0.1 million during the nine months ended March 31, 2011 to an operating loss of less than \$0.1 million as compared to an operating profit of less than \$0.1 million for the same period in fiscal 2010. The decrease in operations was a result of program mix and an increase in headcount. See Note O to our consolidated financial statements included in this report for more information regarding our operating segments and geographic information.

### NON-GAAP FINANCIAL MEASURES

In our periodic communications, we discuss two important measures that are not calculated according to U.S. generally accepted accounting principles ("GAAP"). Adjusted EBITDA is defined as earnings from continuing operations before interest income and expense, income taxes, depreciation, amortization of acquired intangible assets, restructuring, impairment of long-lived assets, acquisition costs and other related expenses, fair value adjustments from purchase accounting and stock-based compensation costs. We use adjusted EBITDA as an important indicator of the operating performance of our business. We use adjusted EBITDA in internal forecasts and models when establishing internal operating budgets, supplementing the financial results and forecasts reported to our board of directors, determining a component of bonus compensation for executive officers and other key employees based on operating performance and evaluating short-term and long-term operating trends in our operations. We believe the adjusted EBITDA financial measure assists in providing a more complete understanding of our underlying operational measures to manage our business, to evaluate our performance compared to prior periods and the marketplace, and to establish operational goals. We believe that these non-GAAP financial adjustments are useful to investors because they allow investors to evaluate the effectiveness of the methodology and information used by management in our financial and operational decision-making.

Adjusted EBITDA is a non-GAAP financial measure and should not be considered in isolation or as a substitute for financial information provided in accordance with GAAP. This non-GAAP financial measure may not be computed in the same manner as similarly titled measures used by other companies. We expect to

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continue to incur expenses similar to the adjusted EBITDA financial adjustments described above, and investors should not infer from our presentation of this non-GAAP financial measure that these costs are unusual, infrequent or non-recurring.

The following table reconciles our most directly comparable GAAP financial measure to adjusted EBITDA:

| <u>(In thousands)</u>                           | <u>Three Months Ended</u> |                 | <u>Nine Months Ended</u> |                 |
|---|---------------------------|-----------------|--------------------------|-----------------|
|   | <u>March 31,</u>          |                 | <u>March 31,</u>         |                 |
|   | <u>2011</u>               | <u>2010</u>     | <u>2011</u>              | <u>2010</u>     |
| Income from continuing operations               | \$ 5,378                  | \$ 3,699        | \$14,243                 | \$10,039        |
| Interest expense (income), net                  | 4                         | (48)            | 49                       | (120)           |
| Income tax expense (benefit)                    | 2,007                     | (2,235)         | 5,780                    | (999)           |
| Depreciation                                    | 1,660                     | 1,312           | 4,640                    | 3,790           |
| Amortization of acquired intangible assets      | 663                       | 434             | 1,299                    | 1,302           |
| Restructuring                                   | —                         | (11)            | —                        | 243             |
| Impairment of long-lived assets                 | —                         | 61              | —                        | 211             |
| Acquisition costs and other related expenses    | 100                       | —               | 407                      | —               |
| Fair value adjustments from purchase accounting | 148                       | —               | 148                      | —               |
| Stock-based compensation cost                   | 1,299                     | 943             | 4,222                    | 2,968           |
| Adjusted EBITDA                                 | <u>\$ 11,259</u>          | <u>\$ 4,155</u> | <u>\$30,788</u>          | <u>\$17,434</u> |

Free cash flow, a non-GAAP measure for reporting cash flow, is defined as cash provided by operating activities less capital expenditures for property and equipment, which includes capitalized software development costs. We believe free cash flow provides investors with an important perspective on cash available for investments and acquisitions after making capital investments required to support ongoing business operations and long-term value creation. We believe that trends in our free cash flow are valuable indicators of our operating performance and liquidity.

Free cash flow is a non-GAAP financial measure and should not be considered in isolation or as a substitute for financial information provided in accordance with GAAP. This non-GAAP financial measure may not be computed in the same manner as similarly titled measures used by other companies. We expect to continue to incur expenditures similar to the free cash flow adjustment described above, and investors should not infer from our presentation of this non-GAAP financial measure that these expenditures reflect all of the our obligations which require cash.

The following table reconciles our most directly comparable GAAP financial measure to free cash flow:

| <u>(In thousands)</u>                 | <u>Three Months Ended</u> |                 | <u>Nine Months Ended</u> |                 |
|---------------------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                                       | <u>March 31,</u>          |                 | <u>March 31,</u>         |                 |
|                                       | <u>2011</u>               | <u>2010</u>     | <u>2011</u>              | <u>2010</u>     |
| Cash provided by operating activities | \$ 5,392                  | \$ 4,521        | \$22,845                 | \$12,295        |
| Purchases of property and equipment   | (1,738)                   | (2,148)         | (5,336)                  | (4,948)         |
| Free cash flow                        | <u>\$ 3,654</u>           | <u>\$ 2,373</u> | <u>\$17,509</u>          | <u>\$ 7,347</u> |

## OFF-BALANCE SHEET ARRANGEMENTS

We provided indemnification to the buyers of our divested businesses. Our indemnification obligations generally cover the buyers for damages resulting from breaches of representations, warranties and covenants contained in the applicable purchase and sale agreement and generally covers pre-closing tax liabilities of the divested businesses. Our indemnification obligations regarding the divested businesses are generally subject to caps on our obligations.

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Other than the indemnification relating to the divestitures of our former businesses which have finite terms, our lease commitments incurred in the normal course of business and certain other indemnification provisions, we do not have any off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not consolidated in the financial statements. Additionally, we do not have an interest in, or relationships with, any special purpose entities.

### LIQUIDITY AND CAPITAL RESOURCES

| <u>(In thousands)</u>                               | As of and for the<br>Nine Months Ended<br>March 31, |            |
|---|---|------------|
|   | 2011  | 2010       |
| Net cash provided by operating activities           | \$ 22,845   | \$ 12,295  |
| Net cash (used in) provided by investing activities | \$ (19,194)   | \$ 6,239   |
| Net cash provided by (used in) financing activities | \$ 96,457   | \$ (6,900) |
| Net increase in cash and cash equivalents           | \$ 100,180  | \$ 11,874  |
| Cash and cash equivalents at end of period          | \$ 156,421  | \$ 58,824  |

#### *Cash and Cash Equivalents*

Our cash and cash equivalents increased by \$100.2 million from June 30, 2010 to March 31, 2011, primarily as the result of \$22.8 million generated by operating activities, \$93.6 million net proceeds received from a follow-on public stock offering, \$18.0 million cash proceeds from sale of marketable securities and \$2.8 million generated from stock related activities, offset by \$29.5 million in payment, net of cash acquired, for the LNX acquisition, \$5.3 million in capital expenditures and \$2.4 million in payments for acquired intangible assets.

During the nine months ended March 31, 2011, we generated \$22.8 million in cash from operating activities compared to \$12.3 million generated from operating activities during the same period in fiscal 2010. The \$10.5 million increase in cash generated from operations was largely driven by a higher comparative net income of \$4.5 million, a \$6.4 million increase in cash generated from prepaid income taxes and income taxes payable, a \$5.1 million increase in cash generated from inventory, a \$3.2 million increase in cash generated from accounts receivables, a \$0.9 million increase in provision for deferred income taxes, and a \$2.1 million increase in stock-based compensation and depreciation and amortization expenses. These improvements were partially offset by a \$7.3 million increase in cash used for accounts payable and accrued expenses, a \$2.1 million increase in cash used for prepaid expenses and other current assets, a \$1.9 million increase in cash used for deferred revenue, customer advances, and other non-current liabilities, and a \$0.4 million increase in cash used for other assets and other non-cash items. Our ability to generate cash from operations in future periods will depend in large part on profitability, the rate of collection of accounts receivable, our inventory turns and our ability to manage other areas of working capital.

During the nine months ended March 31, 2011, we used cash of \$19.2 million in investing activities compared to \$6.2 million generated from investing activities during the same period in fiscal 2010. The \$25.4 million increase in cash used by investing activities was primarily driven by a \$29.5 million payment, net of cash acquired, for the LNX acquisition, a \$2.2 million increase in cash used for purchases of intangible assets and a \$0.4 million increase in capital expenditures, offset by a \$5.9 million increase in net sales of marketable securities and a \$0.8 million decrease in cash payments related to the sale of discontinued operations.

During the nine months ended March 31, 2011, we generated \$96.5 million in cash from financing activities compared to \$6.9 million used by financing activities during the same period in fiscal 2010. The \$103.4 million increase in cash generated from financing activities was primarily due to \$93.6 million of net proceeds received from a follow-on public stock offering, the absence of \$8.4 million in payments under our line of credit with

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UBS, an increase of \$1.1 million of cash generated from stock related activities, and a \$0.2 million decrease in payments of deferred financing costs during the nine months ended March 31, 2010. These increases were slightly offset by \$0.3 million of cash used in payments of capital lease obligations and other.

During the nine months ended March 31, 2011, our primary source of liquidity came from existing cash, \$93.6 million of net proceeds received from a follow-on public stock offering, and cash generated from operations. Our near-term fixed commitments for cash expenditures consist primarily of payments under operating leases, a supply agreement and inventory purchase commitments with our contract manufacturers. We do not currently have any material commitments for capital expenditures.

On January 12, 2011, we acquired the outstanding equity interests in LNX Corporation. The purchase price for the acquisition was approximately \$31.0 million, subject to post-closing adjustments. We funded the purchase price with cash on hand. We acquired LNX Corporation free of bank debt. In addition to the \$31.0 million cash purchase price, we also committed to pay up to \$5.0 million upon the achievement of financial targets in calendar years 2011 and 2012.

On February 16, 2011, we completed a follow-on public stock offering of 5,577,500 shares of common stock, which were sold at a price to the public of \$17.75. The follow-on public stock offering resulted in \$93.6 million of net proceeds to us. The underwriting discount of \$5.0 million and other expenses of \$0.4 million related to the follow-on public stock offering were recorded as an offset to additional paid-in-capital.

Based on our current plans and business conditions, we believe that existing cash, cash equivalents, available line of credit with Silicon Valley Bank and cash generated from operations will be sufficient to satisfy our anticipated cash requirements for at least the next twelve months.

In fiscal 2010, we exercised the put option to sell our ARS balance to UBS at par. The transaction settled on July 1, 2010 when we received \$18.0 million in cash.

### *Borrowings Under UBS Line of Credit*

In fiscal 2010, we repaid all of our borrowings under our line of credit with UBS. Upon the settlement of the put option for our ARS on July 1, 2010, the UBS line of credit terminated.

### *Senior Secured Credit Facility*

#### *Original Loan Agreement*

On February 12, 2010, we entered into a loan and security agreement (the "Loan Agreement") with Silicon Valley Bank (the "Lender"). The Loan Agreement provided for a \$15.0 million revolving line of credit (the "Revolver") and a \$20.0 million acquisition line (the "Term Loan"). The Revolver was available for borrowing during a two-year period, with interest payable monthly and the principal due at the February 11, 2012 maturity of the Revolver. The Term Loan was available for up to three separate borrowings, with total borrowings not to exceed \$20.0 million, until February 11, 2012. The Term Loan had monthly interest and principal payments through the February 11, 2014 maturity of the Term Loan.

The interest rates include various rate options that are available to us. The rates are calculated using a combination of conventional base rate measures plus a margin over those rates. The base rates consist of LIBOR rates and prime rates. The actual rates will depend on the level of these underlying rates plus a margin based on our leverage at the time of borrowing.

Borrowings are secured by a first-priority security interest in all of our domestic assets, including intellectual property, but limited to 65% of the voting stock of foreign subsidiaries. Our MFS subsidiary is a

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guarantor and has granted a security interest in its assets in favor of the Lender. Following the acquisition of LNX Corporation, LNX also became a guarantor. The Lender may require Mercury Computer Systems Limited, our United Kingdom subsidiary, or Nihon Mercury Computer Systems, K.K., our Japanese subsidiary, to provide guarantees in the future if the cash or assets of such subsidiary exceed specified levels.

The Loan Agreement provided for conventional affirmative and negative covenants, including a minimum quick ratio of 1.5 to 1.0. If we had less than \$10.0 million of cash equivalents in accounts with the Lender in excess of our borrowings, we must also satisfy a \$15.0 million minimum trailing-four-quarter cash-flow covenant. The minimum cash flow covenant is calculated as our trailing-four quarter adjusted EBITDA as defined in the Loan Agreement. In addition, the Loan Agreement contains certain customary representations and warranties and limits our and our subsidiaries' ability to incur liens, dispose of assets, carry out certain mergers and acquisitions, make investments and capital expenditures and defines events of default and limitations on us and our subsidiaries to incur additional debt.

### *Amended Loan Agreement*

On March 30, 2011, we entered into an amendment to the Loan Agreement (as amended, the "Amended Loan Agreement") with the Lender. The amendment extended the term of the Revolver for an additional two years, to February 11, 2014, terminated the \$20.0 million Term Loan under the original Loan Agreement, and increased the original \$15.0 million Revolver to \$35.0 million. The amendment also included modifications to the financial covenants as summarized below.

The Amended Loan Agreement provides for conventional affirmative and negative covenants, including a minimum quick ratio of 1.0 to 1.0 and a \$15.0 million minimum trailing four quarter cash flow covenant through and including June 30, 2012 (with \$17.5 million of minimum cash flow required thereafter).

We have had no borrowings under the credit facility since inception and were in compliance with all covenants in the Amended Loan Agreement as of March 31, 2011.

### *Shelf Registration Statement*

On April 28, 2009, we filed a shelf registration statement on Form S-3 with the SEC. The shelf registration statement, which was declared effective by the SEC, registered up to \$100 million of debt securities, preferred stock, common stock, warrants and units. Pursuant to the shelf registration statement described above, on February 16, 2011, we completed a follow-on public stock offering of 5,577,500 shares of our common stock, at a price to the public of \$17.75, generating net proceeds, after underwriting fees and expenses, of \$93.6 million. We intend to use the net proceeds for general corporate purposes, which may include the following:

- the acquisition of other companies or businesses;
- capital expenditures;
- working capital.

The February 2011 follow-on public stock offering generated gross proceeds (i.e., proceeds before underwriting fees) of \$99 million out of the \$100 million available under our existing shelf registration statement, effectively exhausting our shelf registration statement.

### *Commitments and Contractual Obligations*

The following is a schedule of our commitments and contractual obligations outstanding at March 31, 2011:

| <u>(In thousands)</u>     | <u>Total</u>    | <u>Less Than<br/>1 Year</u> | <u>2-3<br/>Years</u> | <u>4-5<br/>Years</u> | <u>More Than<br/>5 Years</u> |
|---------------------------|-----------------|-----------------------------|----------------------|----------------------|------------------------------|
| Purchase obligations      | \$16,091        | \$ 16,091                   | \$ —                 | \$ —                 | \$ —                         |
| Operating leases          | 15,174          | 3,148                       | 5,344                | 4,436                | 2,246                        |
| Supply agreement          | 1,642           | 1,642                       | —                    | —                    | —                            |
| Capital lease obligations | 256             | 170                         | 86                   | —                    | —                            |
|                           | <u>\$33,163</u> | <u>\$ 21,051</u>            | <u>\$5,430</u>       | <u>\$4,436</u>       | <u>\$ 2,246</u>              |



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We have a liability at March 31, 2011 of \$1.9 million for uncertain tax positions that have been taken or are expected to be taken in various income tax returns. We do not know the ultimate resolutions of these uncertain tax positions and as such, do not know the ultimate timing of payments related to this liability. Accordingly, these amounts are not included in the above table.

Purchase obligations represent open non-cancelable purchase commitments for certain inventory components and services used in normal operations. The purchase commitments covered by these agreements are generally for less than one year and aggregated approximately \$16.1 million at March 31, 2011.

In September 2006, we entered into a supply agreement with a third-party vendor to purchase certain inventory parts that went “end of life.” This supply agreement, as subsequently amended, commits the vendor to acquiring and storing approximately \$6.5 million of inventory until August 31, 2012 and allows us to place orders for the inventory four times a year. Upon the earlier of January 31, 2007 or completion of the wafer fabrication process, we were required to and paid approximately \$1.9 million of the \$6.5 million. Further, upon expiration of the agreement on August 31, 2012, if we do not purchase the full \$6.5 million in inventory, we may be required to pay a penalty equal to 35% of the remaining inventory balance. As of March 31, 2011, the remaining minimum commitment related to this agreement was \$1.6 million, which is the 35% “penalty” on the remaining inventory balance. While we expect to continue to purchase this inventory through the expiration of the agreement, we do not expect to purchase the full \$6.5 million noted above. As of March 31, 2011, we have recorded an accrued liability of approximately \$0.6 million for the 35% penalty we anticipate on paying for unpurchased inventory.

Our standard product sales and license agreements entered into in the ordinary course of business typically contain an indemnification provision pursuant to which we indemnify, hold harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with certain intellectual property infringement claims by any third party with respect to our products. Such provisions generally survive termination or expiration of the agreements. The potential amount of future payments we could be required to make under these indemnification provisions is, in some instances, unlimited.

### **RECENT ACCOUNTING PRONOUNCEMENTS**

In December 2010, the FASB issued ASU 2010-28, *When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts*, a consensus of the FASB Emerging Issues Task Force (Issue No. 10-A). The guidance modifies Step 1 of the goodwill impairment test for reporting units with zero or negative carrying amounts. For those reporting units, an entity is required to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. This guidance is effective for us on July 1, 2011 and it is not expected to have a material impact to our consolidated financial statements.

In December 2010, the FASB issued ASU 2010-29, *Business Combinations (Topic 805), Disclosure of Supplementary Pro Forma Information for Business Combinations*, a consensus of the FASB Emerging Issues Task Force (Issue No. 10-G). This guidance specifies that if a public entity presents comparative financial statements, the entity (acquirer) should disclose revenue and earnings of the combined entity as though the business combination(s) that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. It also expands the supplemental pro forma disclosures under Topic 805 to include a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the reported pro forma revenue and earnings. This guidance is effective prospectively for material business combinations for which the acquisition date is on or after July 1, 2011.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

There have been no material changes in our exposure to market risk from June 30, 2010 to March 31, 2011 as we disclosed in Item 7A of our 2010 Annual Report on Form 10-K filed on August 19, 2010 with the Securities and Exchange Commission.

**ITEM 4. CONTROLS AND PROCEDURES**

***(a) Evaluation of Disclosure Controls and Procedures***

We conducted an evaluation under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), regarding the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of March 31, 2011. We continue to review our disclosure controls and procedures and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our Company's business. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

***(b) Changes in Internal Control Over Financial Reporting***

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended March 31, 2011 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

We are subject to legal proceedings, claims and tax audits that arise in the ordinary course of business and in the opinion of management the outcome of these matters will not have a material adverse effect on our financial position, results of operations or cash flows.

### ITEM 1A. RISK FACTORS

You should carefully review and consider the information regarding certain factors that could materially affect our business, financial condition or future results set forth under Item 1A (Risk Factors) in our Annual Report on Form 10-K for the fiscal year ended June 30, 2010 ("2010 Annual Report on Form 10-K"). There have been no material changes from the factors disclosed in our 2010 Annual Report on Form 10-K filed on August 19, 2010 with the Securities and Exchange Commission, although we may disclose changes to such factors or disclose additional factors from time to time in our future filings with the Securities and Exchange Commission.

### ITEM 5. OTHER INFORMATION

On May 4, 2011, our Board of Directors adopted amended and restated by-laws. A summary of the changes to our by-laws reflected in our amended and restated by-laws is set forth below. The following summary of the changes to our by-laws is qualified in its entirety by reference to our amended and restated by-laws filed as Exhibit 3.2 hereto.

#### Summary of By-Law Amendments

##### Meetings of Stockholders (Article 3)

###### Annual Meeting (Section 3.1)

We amended the procedures for a stockholder to properly bring business (other than a stockholder proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended) before a meeting of stockholders. The amended procedures require a stockholder to deliver written notice to the Secretary not less than 120 nor more than 150 days prior to the anniversary date of the immediately preceding annual meeting. The amended procedures also require the stockholder bringing the matter before the meeting to provide the following information: (i) the stockholder's beneficial ownership of the Company's stock as of the date of the stockholder's notice and as of one year prior to the date of such notice; (ii) a description of any derivative positions beneficially held by the stockholder with respect to the Company's stock; (iii) a description of any arrangements between such stockholder and any other person in connection with the proposed business pursuant to which such stockholder has the right to vote any stock of the Company; (iv) a description of any material interest of such stockholder in the business proposed for the meeting, including any anticipated benefit to the stockholder; and (v) a description of any proportionate interest in stock of the Company or derivative positions with respect to the Company held by a general or limited partnership in which such stockholder is a general partner.

###### Notice of Meetings (Section 3.4)

We amended the by-laws to provide that written notice of the date of a meeting of stockholders shall not be given more than 60 days before the meeting date. In addition, the amended by-laws permit notice of a meeting to be distributed by electronic transmission.

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### **Directors (Article 4)**

Enumeration, Election and Term of Office (Section 4.1)

#### *Size of the Board of Directors*

The amended by-laws state that the Board of Directors may be enlarged only by the affirmative vote of a majority of the Board of Directors.

#### *Stockholder Nomination of Directors for Election*

The procedures for a stockholder to nominate a director for election have been amended to include the same notice and information requirements discussed above for a stockholder to bring business before a meeting. In addition, the amended by-laws specify that no person shall be eligible for election as a director unless nominated in accordance with the nomination procedures in the by-laws.

#### *Use of the Company's Proxy Statement by a Stockholder's Director Nominee*

The amended by-laws state that except as required by law, nothing in the by-laws shall obligate the Company to include in any proxy statement or other stockholder communication distributed on behalf of the Company or the Board information with respect to any nominee for director submitted by a stockholder.

#### Meetings of Directors (Section 4.3)

The amended by-laws permit the Company to provide electronic notice of special meetings of directors in addition to traditional delivery methods.

### **Officers (Article 5)**

The amendments to the by-laws replace references to the Clerk with references to the Secretary and combine the positions of Secretary and Secretary of the Board into one position.

The amendments also delete the by-law provision referring to a superseded Massachusetts corporation law requirement regarding registered agents.

### **Indemnification of Directors and Others (Article 7)**

The amendments replace lengthy indemnification provisions with a provision providing that the Company shall indemnify its directors and officers, and may indemnify its other employees, to the fullest extent permitted by law.

### **Stock (Article 8)**

#### Record Date (Section 8.6)

The amended by-laws provide that the Board of Directors may fix a record date not more than 70 days before any meeting of stockholders or the payment of any dividend.

### **Amendments (Article 10)**

We deleted certain requirements for amendments to the by-laws that expired by their terms on January 1, 1999. We also removed the statement of the purposes of the Company from Article 10 as Article 1 otherwise provides that the purposes of the Company shall be as set forth in the Articles of Organization.

### **Control Share Acquisition Statute (Article 11)**

The amended by-laws opt out of the Massachusetts Control Share Acquisition statute.

**ITEM 6. EXHIBITS**

The following Exhibits are filed or furnished, as applicable, herewith:

- 3.2 Bylaws, amended and restated effective as of May 4, 2011
- 10.1 Stock Purchase Agreement by and among Mercury Computer Systems, Inc., LNX Corporation, and the Holders of Securities of LNX Corporation.
- 10.2 Compensation Policy for Non-Employee Directors
- 10.3 First Loan Modification Agreement dated March 30, 2011 between Mercury Computer Systems, Inc. and Silicon Valley Bank (incorporated by reference to Exhibit 10.1 of the Company's current report on Form 8-K filed on April 1, 2011)
- 31.1 Certification of the Chief Executive Officer pursuant to Securities Exchange Act Rule 13a-14(a)/15(d)-14(a), as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer pursuant to Securities Exchange Act Rule 13a-14(a)/15(d)-14(a), as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.1+ Certification of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

+ Furnished herewith. This certificate shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section, nor shall it be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

**MERCURY COMPUTER SYSTEMS, 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, thereunto duly authorized, in Chelmsford, Massachusetts, on May 5, 2011.

MERCURY COMPUTER SYSTEMS, INC.

By:                     /s/ ROBERT E. HULT                      
**Robert E. Hult**  
**Senior Vice President,**  
**Chief Financial Officer and Treasurer**

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BY-LAWS

of

MERCURY COMPUTER SYSTEMS, INC.

ARTICLE 1

Articles of Organization

The name and purposes of the Corporation shall be as set forth in the Articles of Organization. These By-Laws, the powers of the Corporation and its Directors and stockholders, and all matters concerning the conduct and regulation of the business of the Corporation, shall be subject to such provisions in regard thereto, if any, as are set forth in the Articles of Organization. All references in these By-Laws to the Articles of Organization shall be construed to mean the Articles of Organization of the Corporation as from time to time amended or restated.

ARTICLE 2

Fiscal Year

Except as from time to time otherwise determined by the Directors, the fiscal year of the Corporation shall be the twelve months ending on June 30.

ARTICLE 3

Meetings of Stockholders

Section 3.1 Annual Meeting

The annual meeting of the stockholders shall be held on such date and at such time as shall be determined by the Board of Directors each year, which date and time may subsequently be changed at any time, including the year in which any such determination occurs. Purposes for which an annual meeting is to be held, additional to those prescribed by law and by these By-Laws, may be specified by the President or by the Directors.

To be properly brought before the meeting, business must be of a nature that is appropriate for consideration at an annual meeting and must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before the annual meeting by a stockholder (other than a stockholder proposal included in the Corporation's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, unless a lesser time period is required by applicable law, each such notice must be delivered to or mailed and received by the Secretary of the Corporation not later than (1) with respect to a matter to be brought before an annual meeting of stockholders or special meeting in lieu of an annual meeting, not less than one-hundred twenty (120) nor more than one-hundred fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of stockholders or special meeting in lieu of an annual meeting and (2) in the case of a special meeting not in lieu of an annual meeting or if the annual meeting is called for a date (including any change in a date determined by the Board of Directors) not within forty-five (45) days before or after such anniversary date, not later than the close of business on the tenth (10<sup>th</sup>) day following the date on which notice of such meeting was mailed or public disclosure of the date of such meeting was made, whichever first occurs. The notice shall set forth (i) information concerning the stockholder, including his or her name and address; (ii) a representation that the stockholder is entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to present the matter specified in the notice, (iii) the class and number of all shares of stock of the Corporation held of record, owned beneficially (directly or indirectly) and represented by proxy by such stockholder as of the date of such notice and as of one year prior to the date of such notice, (iv) a description of any derivative positions held or beneficially held (directly or indirectly) by the stockholder, including whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made by or on behalf of, the effect or intent of which is to mitigate loss to, or manage risk or benefit of share price changes for, or to increase or decrease the voting power or pecuniary or economic interest of, such stockholder with respect to stock of the Corporation (any of the foregoing, a "Derivative Position"), (v) a description of any proxy, contract, arrangement, understanding or relationship between such stockholder and any other person or persons (including their names and addresses) in connection with the proposal of such business by such stockholder or pursuant to which such stockholder has a right to vote any stock of the Corporation, (vi) a description of any material interest of such stockholder in such business, including any anticipated benefit to the stockholder therefrom, (vii) a description of any proportionate interest in stock of the Corporation or Derivative Positions with respect to the Corporation held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in such a general partner,

and (viii) such other information as would be required to be included in a proxy statement soliciting proxies for the presentation of such matter to the meeting.

Notwithstanding anything in these By-Laws to the contrary, no business shall be transacted at the annual meeting except in accordance with the procedures set forth in this Section; provided, however, that nothing in this Section shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with these By-Laws.

### Section 3.2 Special Meetings

A special meeting of the stockholders may be called at any time by the President, or by a majority of the Directors acting by vote or by written instrument or instruments signed by them. A special meeting of the stockholders shall be called by the Secretary, or in the case of death, absence, incapacity or refusal of the Secretary, by any other officer, upon written application of one or more stockholders who hold at least forty (40) percent (or such lesser percentage as may be required by law) in interest of the capital stock entitled to vote thereat. Such call shall state the time, place and purposes of the meeting. In the event that none of the officers is able or willing to call a special meeting, the supreme judicial or superior court, upon application of one or more stockholders who hold at least forty (40) percent (or such lesser percentage as may be required by law) in interest of the capital stock entitled to vote thereat, shall have jurisdiction in equity to authorize one or more of such stockholders to call a meeting by giving notice as is required by law.

### Section 3.3 Place of Meetings

All meetings of the stockholders shall be held at the principal office of the Corporation in Massachusetts, unless a different place within Massachusetts or, if permitted by the Articles of Organization, elsewhere within the United States is designated by the President, or by a majority of the Directors acting by vote or by written instrument or instruments signed by them. Any adjourned session of any meeting of the stockholders shall be held at such place within Massachusetts or, if permitted by the Articles of Organization, elsewhere within the United States as is designated in the vote of adjournment.

### Section 3.4 Notice of Meetings

A written notice of the place, date and hour of a meetings of stockholders stating the purposes of the meeting shall be given no fewer than seven (7) nor more than sixty (60) days before the meeting to each stockholder entitled to vote thereat, by leaving such notice with him or at his residence or usual place of business or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears in the records of the Corporation, or by electronic transmission directed at such shareholder in such manner as the shareholder shall have specified to the Corporation, including by facsimile transmission, electronic mail or posting on an electronic network. Such notice shall be given by the Secretary, or in the case of the death, absence, incapacity or refusal of the Secretary, by any other officer or by a person designated either by the Secretary, by the person or persons calling the meeting, by any stockholder or group of stockholders applying for such meeting pursuant to Section 3.2 of Article 3 of these By-Laws or by the Board of Directors. Whenever notice of a meeting is required to be given a stockholder under any provision of law, of the Articles of Organization, or of these By-Laws, a written waiver thereof, executed before or after the meeting by such stockholder or his attorney thereunto authorized, and filed with the records of the meeting, shall be deemed equivalent to such notice.

### Section 3.5 Quorum and Adjournment

At any meeting of the stockholders, a quorum for the election of any Director or for the consideration of any question shall consist of a majority in interest of all stock issued, outstanding and entitled to vote at such election or upon such question, respectively, except that if two or more classes of stock are entitled to vote as separate classes for the election of any Director or upon any question, then in the case of each such class a quorum for the election of any Director or for the consideration of such question shall consist of a majority in interest of all stock of that class issued, outstanding and entitled to vote thereon. Stock owned by the Corporation, if any, shall be disregarded in determining any quorum. Both abstentions and broker non-votes are to be counted for the purpose of determining the existence of a quorum for the transaction of business at any meeting. Whether or not a quorum is present, any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, and the meeting may be held as adjourned without further notice. In addition, the presiding officer at any shareholders meeting shall have the authority to reschedule or adjourn any such meeting if (a) no quorum is present for the transaction of business; (b) the Board of Directors determines that an adjournment is necessary or appropriate to enable the shareholders to consider fully information which the Board of Directors determines has not been made sufficiently or timely available to shareholders; or (c) the Board of Directors determines that adjournment is otherwise in the best interests of the Corporation.

When a quorum for an election is present at any meeting, a plurality of the votes properly cast for any office shall elect such office. When a quorum for the consideration of a question is present at any meeting, a majority of the votes properly cast upon the question shall decide the question; except that if two or more classes of stock are entitled to vote as separate classes upon such question, then in the case of each such class a majority of the votes of such class properly cast upon the question shall decide the vote of that class upon the question; and except in any case where a larger vote is required by law or by the Articles of Organization. For purposes of determining the number of shares voting on a particular proposal, abstentions and broker nonvotes are not to be counted as votes cast or shares voting.

### Section 3.6 Action without Meeting

Any action required or permitted to be taken at any meeting of the stockholders may be taken without a meeting if all stockholders entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of stockholders. Such consents shall be treated for all purposes as a vote at a meeting.

### Section 3.7 Proxies and Voting

Except as may otherwise be provided in the Articles of Organization, stockholders entitled to vote shall have one vote for each share of stock entitled to vote owned by them. Stockholders entitled to vote may vote in person or by proxy. No proxy dated more than six (6) months before the meeting named therein shall be valid and no proxy shall be valid after the final adjournment of such meeting; provided, however, that a proxy coupled with an interest sufficient in law to support an irrevocable power, including, without limitation, an interest in the shares or in the Corporation generally, may be irrevocable if it so provides, need not specify the meeting to which it relates, and shall be valid and enforceable until the interest terminates, or for such shorter period as may be specified in the proxy. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by any one of them unless at or prior to the exercise of the proxy the Corporation receives specific written notice to the contrary from any one of them. A proxy purporting to be executed by or on behalf of a stockholder shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Proxies shall be filed with the Secretary, or person performing the duties of Secretary, at the meeting, or any adjournment thereof, before being voted.

The Corporation shall not, directly or indirectly, vote upon any share of its own stock. Both abstentions and broker non-votes are to be counted as present for the purpose of determining the existence of a quorum for the transaction of business at any meeting. However, for purposes of determining the number of shares voting a particular proposal, abstentions and broker non-votes are not to be counted as votes cast or shares voting.

## ARTICLE 4

### Directors

#### Section 4.1 Enumeration, Election and Term of Office

The business and affairs of this Corporation shall be managed under the direction of a Board of Directors consisting of not fewer than three (3) nor more than fifteen (15) Directors, the exact number to be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors, such Board of Directors to be divided into such classes and elected by such stockholders as have the right to vote thereon, for such terms as are provided in the Articles of Organization. Each Director shall hold office until his successor shall have been elected and qualified, subject to Article 6 of these By-Laws. Whenever used in these By-Laws, the phrase "entire Board of Directors" shall mean that number of Directors fixed by the most recent resolution adopted pursuant to the preceding sentence prior to the date as of which a determination of the number of Directors then constituting the entire Board of Directors shall be relevant for any purpose under these By-Laws. Subject to the foregoing limitations and the requirements of the Articles of Organization, the Board of Directors may be enlarged by the affirmative vote of a majority of the entire Board of Directors then in office.

Nominations for the election of Directors may be made by the Board of Directors or a committee appointed by the Board of Directors or by any stockholder entitled to vote generally in the election of Directors. However, any stockholder entitled to vote generally in the election of Directors may nominate one or more persons for election as Directors at a meeting only if written notice of such stockholder's intent to make such nomination or nominations has been delivered to or mailed and received by the Secretary of the Corporation not later than, unless a lesser time period is required by applicable law, (1) with respect to an election to be held at an annual meeting of stockholders or special meeting in lieu of an annual meeting, not less than one-hundred twenty (120) nor more than one-hundred fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of stockholders or special meeting in lieu of an annual meeting and (2) in the case of a special meeting not in lieu of an annual meeting or if the annual meeting is called for a date (including any change in a date determined by the Board of Directors) not within forty-five (45) days before or after such anniversary date, not later than the close of business on the tenth (10<sup>th</sup>) day following the date on which notice of such meeting was mailed or public disclosure of the date of such meeting was made, whichever first occurs. Each such notice to the Secretary shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director, (i) the name and address of the stockholder and each of his or her nominees; (ii) a representation that the stockholder is entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or understandings between the stockholder and each such nominee; (iv) such other information as would be required to be included in a proxy statement soliciting proxies for the election of the nominees of such stockholder; and (v) the consent of each nominee to serve as a Director of the Corporation if so elected; and (b) as to the stockholder giving the notice, (i) the class and number of all shares of stock of the Corporation held of record, owned beneficially (directly or indirectly) and represented by proxy by such stockholder as of the date of such notice and as of one year prior to the date of such notice, (ii) a description of all arrangements or understandings between such stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such stockholder, (iii) a description of any Derivative

Position held or beneficially held (directly or indirectly) by such stockholder with respect to stock of the Corporation, (iv) a description of any proxy, contract, arrangement, understanding or relationship between such stockholder and any other person or persons (including their names and addresses) in connection with the nomination or nominations to be made by such stockholder or pursuant to which such stockholder has a right to vote any stock of the Corporation, (v) a description of any proportionate interest in stock of the Corporation or Derivative Positions with respect to the Corporation held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in such a general partner, and (vi) such other information regarding such stockholder as would be required to be included in a proxy statement soliciting proxies for the election of the nominees of such stockholder. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a Director of the Corporation. No person shall be eligible for election as a Director unless nominated in accordance with the provisions set forth herein.

The presiding officer of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedure, and if such officer should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

Except as otherwise required by law, nothing in this Section shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for Director submitted by a stockholder.

No Director need be a stockholder. Any election of Directors by the stockholders shall be by ballot if so requested by any stockholder entitled to vote thereon.

#### Section 4.2 Powers

The business of the Corporation shall be managed by the Board of Directors, which shall exercise all the powers of the Corporation except as otherwise required by law, by the Articles of Organization or by these By-Laws. In the event of one or more vacancies in the Board of Directors the remaining Directors, if at least two (2) Directors still remain in office, may exercise the powers of the full Board until such vacancy or vacancies are filled.

#### Section 4.3 Meetings of Directors

Regular meetings of the Directors may be held without notice at such places and at such times as may be fixed from time to time by the Directors. A regular meeting of the Directors may be held without notice immediately following an annual meeting of stockholders or any special meeting held in lieu thereof.

Special meetings of Directors may be called by the Chairman of the Board, the President, the Treasurer or any two (2) or more Directors, or if there shall be less than three (3) Directors, by any one (1) Director, and shall be held at such time and place as specified in the call. Reasonable notice of each special meeting of the Directors shall be given to each Director. Such notice may be given by the Secretary or any Assistant Secretary or by the officer or one of the Directors calling the meeting. Notice to a Director shall in any case be sufficient if sent by telegram, telecopier, electronic mail or posting on an electronic network at least forty-eight (48) hours or, by mail at least ninety-six (96) hours before the meeting addressed to the Director at his or her usual or last known business or residence address, or if given to him or her at least forty-eight (48) hours before the meeting in person or by telephone or by handing him or her a written notice. Notice of a meeting need not be given to any Director if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. A notice or waiver of notice need not specify the purposes of the meeting.

#### Section 4.4 Quorum of Directors

At any meeting of the Directors, a quorum for any election or for the consideration of any question shall consist of a majority of the Directors then in office, but a smaller number may make a determination pursuant to Section 8.55 or Section 8.56 of Chapter 156D of the Massachusetts Business Corporation Act that indemnification is permissible in a specific proceeding. Whether or not a quorum is present any meeting may be, adjourned from time to time by a majority of the votes properly cast upon the question, and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the votes of a majority of the Directors present shall be requisite and sufficient for election to any office and shall decide any question brought before such meeting, except in any case where a larger vote is required by law, by the Articles of Organization or by these By-Laws.

#### Section 4.5 Consent in Lieu of Meeting and Participation in Meetings by Communications Equipment

Unless the Articles of Organization otherwise provide, any action required or permitted to be taken at any meeting of the Directors may be taken without a meeting if the action is taken by the unanimous consent of all of the Directors. The action must be evidenced by one or more consents describing the action taken, in writing, signed by each Director, or delivered to the Corporation by electronic transmission to the

address specified by the Corporation for the purpose or, if no address has been specified, to the principal office of the Corporation, addressed to the Secretary or other officer or agent having custody of the records of proceedings of Directors, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section is effective when the last Director signs or delivers the consent, unless the consent specifies a different effective date. A consent signed or delivered under this Section has the effect of a meeting vote and may be described as such in any document. This paragraph shall apply to any Committee designated by the Board of Directors and its members.

Members of the Board of Directors or any Committee designated thereby may participate in meetings of such Board or Committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

#### Section 4.6 Committees

By vote of a majority of the Directors then in office, the Directors may elect from their own number an Executive Committee or other Committees and may by like vote delegate to any such Committee some or all of their powers except those which by law may not be delegated.

### ARTICLE 5

#### Officers

##### Section 5.1 Enumeration, Election and Term of Office

The officers of the Corporation shall include a President, a Treasurer and a Secretary, who shall be chosen by the Directors at their first meeting following an annual meeting of the stockholders. Each of the officers shall hold office until the next annual election to the office which he or she holds and until his or her successor is chosen and qualified or until he or she sooner dies, resigns, is removed or becomes disqualified. The Directors may choose one of their number to be Chairman of the Board and determine his or her powers, duties and term of office. The Directors may at any time appoint such other officers, including one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries, as they deem wise, and may determine their respective powers, duties and terms of office.

The Corporation may also designate individuals as divisional, group, or segment vice presidents or vice presidents of a particular function, which individual shall carry such title on a non-executive basis and not as an executive officer of the Corporation. Said non-executive vice presidents may be designated by the Board of Directors or by the President pursuant to Board resolutions so-authorizing the President to appoint non-executive vice presidents on a particular occasion or from time to time in his or her discretion, said honorary vice presidents to be titled "Vice President (specific area of function)."

No officer need be a stockholder or a Director except that the Chairman of the Board shall be a Director. The same person may hold more than one office, except that no person shall be both President and Secretary.

##### Section 5.2 President and Chairman of the Board

The President shall be the Chief Executive Officer of the Corporation and, subject to the control and direction of the Directors, shall have general supervision and control of the business of the Corporation. The President shall preside at all meetings of the stockholders at which he or she is present, and, if the President is a Director, at all meetings of the Directors, if there shall be no Chairman of the Board or in the absence of the Chairman of the Board.

If there shall be a Chairman of the Board, such person shall make his or her counsel available to the other officers of the Corporation, and shall have such other duties and powers as may from time to time be conferred on him or her by the Directors. The Chairman of the Board shall preside at all meetings of the Directors at which he or she is present, and, in the absence of the President, at all meetings of stockholders.

##### Section 5.3 Treasurer and Assistant Treasurer

The Treasurer shall have the custody of the funds and valuable books and papers of the Corporation, except such as are directed by these By-Laws to be kept by the Secretary. The Treasurer shall perform all other duties usually incident to such office, and shall be at all times subject to the control and direction of the Directors. If required by the Directors, the Treasurer shall give bond in such form and amount and with such sureties as shall be determined by the Directors.

If the Treasurer is absent or unavailable, any Assistant Treasurer shall have the duties and powers of Treasurer and shall have such further duties and powers as the Directors shall from time to time determine.

##### Section 5.4 Secretary and Assistant Secretary

The Secretary shall record all proceedings of the stockholders and the Board of Directors in books to be kept therefor.

If the Corporation shall not have a transfer agent, the Secretary shall also keep or cause to be kept the stock and transfer records of the Corporation, which shall contain the names of all stockholders and the record address and the amount of stock held by each.

If the Secretary is absent or unavailable, any Assistant Secretary shall have the duties and powers of the Secretary and shall have such further duties and powers as the Directors shall from time to time determine.

#### Section 5.5 Temporary Secretary

If no Secretary or Assistant Secretary shall be present at any meeting of the stockholders, or at any meeting of the Directors, the person presiding at the meeting shall designate a Temporary Secretary to perform the duties of Secretary.

#### Section 5.6 Other Powers and Duties

Each officer shall, subject to these By-Laws and to the control and direction of the Directors, have in addition to the duties and powers specifically set forth in these By-Laws, such duties and powers as are customarily incident to such office and such additional duties and powers as the Directors may from time to time determine.

### ARTICLE 6

#### Resignations, Removals and Vacancies

##### Section 6.1 Resignations

Any Director or officer may resign at any time by delivering his or her resignation in writing to the President or the Secretary or to a meeting of the Directors. Such resignations shall take effect at such time as is specified therein, or if no such time is so specified, then upon delivery thereof to the President or the Secretary or to a meeting of the Directors.

##### Section 6.2 Removals

Directors, including Directors elected by the Directors to fill vacancies in the Board, may be removed from office (a) with cause by vote of the holders of a majority of the shares issued and outstanding and entitled to vote generally in the election of Directors; (b) with or without cause by vote of the holders of at least 80% of the votes entitled to be cast by the holders of all shares of the Corporation entitled to vote generally in the election of Directors, voting together as a single class; (c) with cause by vote of a majority of the Directors then in office; or (d) without cause by vote of at least 80% of the Directors then in office (including the Director to be removed in calculating said percentage); provided that the Directors, of a class elected by a particular class of shareholders may be removed only by vote of the holders of a majority of the shares of such class.

The Directors may terminate or modify the authority of any agent or employee. The Directors may remove any officer from office with or without assignment of cause by vote of a majority of the Directors then in office.

If cause is assigned for removal of any Director or officer, such Director or officer may be removed only after reasonable notice and opportunity to be heard before the body proposing to remove him.

No Director or officer who resigns or is removed shall have any right to any compensation as such Director or officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise; provided, however, that the foregoing provision shall not prevent such Director or officer from obtaining damages for breach of any contract of employment legally binding upon the Corporation.

##### Section 6.3 Vacancies

Any vacancy in the Board of Directors, including a vacancy resulting from an enlargement of the Board, may be filled by the Directors by vote of a majority of the remaining Directors then in office, though less than a quorum, or by the stockholders at a meeting called for the purpose, provided that any vacancy created by the stockholders may be filled by the stockholders at the same meeting. Any Director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new Directorship was created or the vacancy occurred and until such Director's successor shall have been elected and qualified or until he or she sooner dies, resigns, is removed or becomes disqualified.

If the office of any officer becomes vacant, the Directors may choose or appoint a successor by vote of a majority of the Directors present at the meeting at which such choice or appointment is made.

Each such successor shall hold office for the unexpired term of the Director's predecessor and until a successor shall be chosen or appointed and qualified, or until he or she sooner dies, resigns, is removed or becomes disqualified.

ARTICLE 7

Indemnification of Directors and Others

The Corporation shall indemnify its Directors and the officers that have been appointed by the Board of Directors to the fullest extent permitted by law, and may indemnify such other employees as determined by the Board of Directors.

ARTICLE 8

Stock

Section 8.1 Stock Authorized

The total number of shares and the par value, if any, of each class of stock which the Corporation is authorized to issue, and if more than one class is authorized, the descriptions, preferences, voting powers, qualifications and special and relative rights and privileges as to each class and any series thereof, shall be as stated in the Articles of Organization.

Section 8.2 Issue of Authorized Unissued Capital Stock

Any unissued capital stock from time to time authorized under the Articles of Organization and amendments thereto may be issued by vote of the Directors. No stock shall be issued unless the cash, so far as due, or the property, services or expenses for which it was authorized to be issued, has been actually received or incurred by, or conveyed or rendered to, the Corporation, or is in its possession as surplus.

Section 8.3 Certificates of Stock

Each stockholder shall be entitled to a certificate in such form as may be prescribed from time to time by the Directors, stating the number and the class and the designation of the series, if any, of the shares held by him. Such certificates shall be signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer. Such signatures may be facsimiles if the certificate is signed by a transfer agent, or by a registrar, other than a Director, officer or employee of the Corporation. In case any officer who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the time of its issue.

Every certificate issued by the Corporation for shares of stock at a time when such shares are subject to any restriction on transfer pursuant to the Articles of Organization, the By-Laws or any agreement to which the Corporation is a party shall have the restriction noted conspicuously on the certificate and shall also set forth on the face or back of the certificate either the full text of the restriction, or a statement of the existence of such restriction and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge. Every stock certificate issued by the Corporation at a time when it is authorized to issue more than one class or series of stock shall set forth upon the face or back of the certificate either the full text of the preferences, voting powers, qualifications and special and relative rights of the shares of each class and series, if any, authorized to be issued, as set forth in the Articles of Organization, or a statement of the existence of such preferences, powers, qualifications and rights and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge. Notwithstanding anything to the contrary provided in these By-Laws and consistent with Section 6.26 of the Massachusetts Business Corporation Act as now in effect and hereafter amended, the Board of Directors of the Corporation may authorize the issue of some or all of the shares of any or all of the classes or series without certificates. The authorization shall not effect shares already represented by certificates, until they are surrendered to the Corporation, and by the approval and adoption of these By-Laws, the Board of Directors has determined that all classes or series of the Corporation stock may be uncertificated shares, whether upon original issue, re-issuance or subsequent transfer. Within a reasonable time after the issue or transfer of shares without certificates, the Corporation shall send the shareholder a written statement of the information required on certificates by Sections (b) and (c) of Section 6.25 and, if applicable, Section 6.27 of the Massachusetts Business Corporation Act, as now in effect and from time to time amended.

Section 8.4 Replacement Certificate

In case of the alleged loss or destruction or the mutilation of a certificate of stock, a new certificate may be issued in place thereof, upon such conditions as the Directors may determine.

Section 8.5 Transfers

Subject to the restrictions, if any, imposed by the Articles of Organization, the By-Laws or any agreement to which the Corporation is a party, and unless otherwise provided by the Board of Directors, shares of stock of the Corporation that are represented by a certificate shall be transferred on the books of the Corporation only by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment of such shares or by a written power of attorney to sell, assign or transfer such shares, properly executed, with necessary transfer stamps affixed, and with such proof that the endorsement, assignment or power of attorney is genuine and effective as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate

shall be transferred or assignable on the stock transfer books of the Corporation, by the holders submitting to the Corporation or its transfer agent, such evidence of transfer and following such other procedures as the Corporation or its transfer agent may reasonably require. Except as may otherwise be required by law, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-Laws. It shall be the duty of each stockholder to notify the Corporation of his post office address.

#### Section 8.6 Record Date

The Directors may fix in advance a time, which shall be not more than seventy (70) days before the date of any meeting of stockholders or the date for the payment of any dividend or the making of any distribution to stockholders or the last day on which the consent or dissent of stockholders may be effectively expressed for any purpose, as the record date for determining the stockholders having the right to notice of and to vote at such meeting and any adjournment thereof or the right to receive such dividend or distribution or the right to give such consent or dissent, and in such case only stockholders of record on such date shall have such right, notwithstanding any transfer of stock on the books of the Corporation after the record date; or without fixing such record date the Directors may for any such purposes close the transfer books for all or any part of such period.

If no record date is fixed and the transfer books are not closed:

(1) The record date for determining stockholders having the right to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given.

(2) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors acts with respect thereto.

### ARTICLE 9

#### Miscellaneous Provisions

##### Section 9.1 Execution of Papers

All deeds, leases, transfers, contracts, bonds, notes, releases, checks, drafts and other obligations authorized to be executed on behalf of the Corporation shall be signed by the President or the Treasurer except as the Directors may generally or in particular cases otherwise determine.

##### Section 9.2 Voting of Securities

Except as the Directors may generally or in particular cases otherwise determine the President or the Treasurer may, on behalf of the Corporation (i) waive notice of any meeting of stockholders or shareholders of any other corporation, or of any association, trust or firm, of which any securities are held by this Corporation; (ii) appoint any person or persons to act as proxy or attorney-in-fact for the Corporation, with or without substitution, at any such meeting; and (iii) execute instruments of consent to stockholder or shareholder action taken without a meeting.

##### Section 9.3 Corporate Seal

The seal of the Corporation shall be a circular die with the name of the Corporation, the word "Massachusetts" and the year of its incorporation cut or engraved thereon, or shall be in such other form as the Board of Directors or the stockholders may from time to time determine.

##### Section 9.4 Corporate Records

The original, or attested copies, of the Articles of Organization, By-Laws, and the records of all meetings of incorporators and stockholders, and the stock and transfer records, which shall contain the names of all stockholders and the record address and the amount of stock held by each, shall be kept in Massachusetts for inspection by the stockholders at the principal office of the Corporation or at an office of the Secretary, or if the Corporation shall have a transfer agent or a resident agent, at an office of either of them. Said copies and records need not all be kept in the same office.

### ARTICLE 10

#### Amendments



These By-Laws may be altered, amended or repealed or new By-Laws enacted by the affirmative vote of a majority of the entire Board of Directors (if notice of the proposed alteration or amendment is contained in the notice of the meeting at which such vote is taken or if all Directors are present) or at any regular meeting of the stockholders (or at any special meeting thereof duly called for that purpose) by the affirmative vote of a majority of the shares represented and entitled to vote at such meeting (if notice of the proposed alteration or amendment is contained in the notice of such meeting).

ARTICLE 11

Massachusetts Control Share Acquisition Act

The provisions of Chapter 110D of the Massachusetts General Laws shall not apply to control share acquisitions of the Corporation.

As amended and restated effective May 4, 2011

STOCK PURCHASE AGREEMENT  
BY AND AMONG  
MERCURY COMPUTER SYSTEMS, INC.,  
LNX CORPORATION,  
THE HOLDERS OF SECURITIES OF LNX CORPORATION  
LISTED ON SCHEDULE I HERETO  
AND  
THE SELLERS' REPRESENTATIVE NAMED HEREIN  
Dated as of January 12, 2011

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EXHIBIT

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## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement") is made and entered into as of January 12, 2011 by and among MERCURY COMPUTER SYSTEMS, INC., a Massachusetts corporation ("Buyer"), LNX CORPORATION, a Massachusetts corporation (the "Company"), each of the holders of outstanding shares of capital stock of the Company listed on Annex I-A hereto (referred to as the "Shareholders" or the "Sellers"), and Lamberto Raffaelli, in his capacity as the Sellers' Representative.

### RECITALS

WHEREAS, the Company is engaged in (i) the design and manufacturing of radio-frequency and digital products, microwave and millimeter wave components and integrated assemblies, for both military and commercial applications (the "Design & Manufacturing Business") and (ii) through its Solynx division, the provision of global procurement services (the "Services Business");

WHEREAS, prior to the Closing (as defined below), the Company will contribute all of its assets and liabilities primarily associated with its Services Business to Solynx Corporation, a Massachusetts corporation (the "New Services Entity") (such contribution, the "Services Business Transfer"), pursuant to the agreement attached hereto as Exhibit A-1 (the "Services Business Transfer Agreement") and the Transition Services Agreement in the form of Exhibit A-2 hereto (the "Transition Services Agreement"). In consideration of the contribution of such assets and liabilities to the New Services Entity, the New Services Entity shall issue 100% of its equity interests to the Company and the Company shall distribute such equity interests pro rata to the Shareholders. Following the completion of the Services Business Transfer, only the assets and liabilities relating to the Design & Manufacturing business shall remain with the Company at the Closing;

WHEREAS, the Shareholders own all of the outstanding shares of Common Stock, par value \$0.01 per share, of the Company (such common stock being referred to herein as the "Common Stock") and such outstanding common shares being referred to herein as the "Shares");

WHEREAS, shortly before the execution and delivery of this Agreement the Shareholders listed on Annex I-A hereto as "Former Optionholders" (and in such capacity, referred to herein as the "Former Optionholders") exercised all their outstanding options to acquire Common Stock (the "Options") and acquired shares of Common Stock;

WHEREAS, after the exercise of the Options as described above, the Shares constitute all of the outstanding Equity Interests (as defined below) in the Company;

WHEREAS, Buyer desires to purchase from the Shareholders, and the Shareholders desire to sell to Buyer, at the Closing all of the Shares upon the terms and subject to the conditions set forth in this Agreement;



WHEREAS, contemporaneously with the Closing, the Buyer shall enter into a consulting agreement with Lamberto Raffaelli (the "Consulting Agreement") substantially in the form attached hereto as Exhibit B and shall enter into an Escrow Agreement with Wells Fargo Bank, N.A., as escrow agent (the "Escrow Agent"), and the Sellers' Representative substantially in the form of Exhibit C hereto (the "Escrow Agreement"); and

WHEREAS, in order to provide for the payments that will become due under the Phantom Equity Plans (as defined in Article II below), shortly before the execution and delivery of this Agreement the Company and the persons identified in Annex I-B hereto (the "Phantom Plan Participants") entered into the Phantom Plan Payment Agreement in the form of Exhibit D hereto (the "Phantom Plan Payment Agreement").

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the parties to this Agreement hereby agree as follows:

### ARTICLE I

#### DEFINITIONS; CERTAIN RULES OF CONSTRUCTION

##### Section 1.1. Definitions.

(a) In addition to the other terms defined throughout this Agreement, the following terms shall have the following meanings when used in this Agreement:

"1933 Act" means the Securities Act of 1933.

"Accounting Principles" means GAAP as in effect on the Most Recent Balance Sheet Date and, to the extent in accordance with GAAP as in effect on such date, applied on a basis consistent with the Financials.

"Action" means any claim, action, cause of action, suit, litigation, arbitration, investigation, opposition, interference, audit, assessment, hearing, complaint, demand or other legal proceeding (whether sounding in contract, tort or otherwise, whether civil or criminal and whether brought at law or in equity) that is commenced, brought, conducted, tried or heard by or before, or otherwise involving, any Governmental Authority.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such specified Person. For purposes of the foregoing, (a) a Person shall be deemed to control a specified Person if such Person (or a Family Member of such Person) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such specified Person or (b) if such other Person is at such time a direct or indirect beneficial holder of at least 10% of any class of the Equity Interests of such specified Person.

“Ancillary Agreements” means the Services Business Transfer Agreement, the Transition Services Agreement, the Consulting Agreement, the Escrow Agreement, the Phantom Plan Payment Agreement and any certificates to be delivered pursuant to Sections 7.4(a) and (b).

“Applicable Indemnity Percentage” means, (i) for any Shareholder or Phantom Plan Participant, in case of any claims for indemnification by the Buyer pursuant to Section 9.1(a)(i), (ii), (v), (vi) or (vii) or Article X for which sufficient funds are available (and not subject to another pending claim) pursuant to the Escrow Agreement, the percentage set forth for such Shareholder or Phantom Plan Participant on Annex I hereto and (ii) for any Shareholder, in case of any claim for indemnification by the Buyer pursuant to Section 9.1(a)(i), (ii), (v), (vi) or (vii) or Article X for which (or to the extent that) sufficient funds are not available (and not subject to another pending claim) pursuant to the Escrow Agreement, the percentage set forth for such Shareholder on Annex I hereto.

“Business” means the businesses conducted by the Company as of the date hereof, comprised of the Design & Manufacturing Business and the Services Business.

“Business Day” means any day other than a Saturday or a Sunday or a weekday on which banks in Boston, Massachusetts are authorized or required to be closed.

“Change of Control Payment” means (a) any bonus, severance or other payment or other form of Compensation that is created, accelerated, accrues or becomes payable by the Company to any present or former director, stockholder, employee or consultant thereof, including pursuant to any employment agreement, benefit plan or any other Contractual Obligation, including any Taxes payable on or triggered by any such payment (other than payments in respect of the Securities under or as described in Article II of this Agreement) and (b) without duplication of any other amounts included within the definition of Seller Transaction Expenses, any other payment, expense or fee that accrues or becomes payable by the Company to any Governmental Authority, including in connection with the making of any filings, the giving of any notices or the obtaining of any consents, authorizations or approvals from any Governmental Authority, in the case of each of (a) and (b), as a result of, or in connection with, the execution and delivery of this Agreement or any Ancillary Agreement or the consummation of the Contemplated Transactions. Change of Control Payments shall include without limitation all payments pursuant to the Company’s cash incentive plan and all other Company phantom equity plans or agreements.

“Closing Date” means the date on which the Closing actually occurs.

“Closing Debt Amount” means the amount of Debt of the Company as of the Closing Date as set forth on the Closing Date Debt Schedule attached hereto as Annex III. The Closing Debt Amount will not include Debt associated with the car leases and car loans described in Section 3.8 of the Company Disclosure Schedule.

“Code” means the U.S. Internal Revenue Code of 1986.

“Combined Percentage” means, for any Seller or Phantom Plan Participant, the applicable percentage set forth on Annex I-A or Annex I-B as applicable.

“Combined Purchase Price” means the Purchase Price and the corresponding amount to be paid pursuant to Section 2(b) of the Phantom Plan Payment Agreement (prior to any withholding).

“Company Disclosure Schedule” means the separate set of schedules relating to this Agreement and prepared by the Company and delivered by the Company and the Sellers’ Representative to the Buyer immediately prior to the execution and delivery of this Agreement.

“Company Intellectual Property Rights” means all Licensed Intellectual Property Rights and Owned Intellectual Property Rights.

“Company’s Knowledge,” “Knowledge of the Company” and similar formulations mean that one or more of Lamberto Raffaelli, Anne Daniels, Steven Hurwitz, William Tufts, Paul Monte, Michael Groden, Frederick Schindler, Philip Beucler, Arthur Humason, Lawrence LaPlante, Jan Conant and Doris Parr has actual knowledge of the fact or other matter at issue.

“Company Products” means any products being sold, manufactured or developed, and any services being provided, by the Company in connection with and/or related to the Design & Manufacturing Business as currently conducted.

“Compensation” means, with respect to any Person, all salaries, compensation, remuneration, bonuses or benefits of any kind or character whatsoever (including issuances or grants of Equity Interests), made directly or indirectly by the Company to or for the benefit of such Person or any Family Member of such Person.

“Contemplated Transactions” means the transactions contemplated by this Agreement, including (a) the purchase and sale of the Shares and the other transactions described in the recitals to this Agreement, (b) the execution, delivery and performance of the Ancillary Agreements, and (c) the payment of fees and expenses relating to such transactions.

“Contractual Obligation” means, with respect to any Person, any contract, agreement, deed, mortgage, lease, sublease, license, sublicense or other commitment, promise, undertaking, obligation, arrangement, instrument or understanding, whether written or oral, to which or by which such Person is a party or otherwise subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

“Debt” means, with respect to any Person, and without duplication, all Liabilities, including all obligations in respect of principal, accrued interest, penalties, fees and premiums, of such Person (a) for borrowed money (including amounts outstanding under overdraft facilities), (b) evidenced by notes, bonds, debentures or other similar Contractual Obligations, (c) in respect of “earn-out” obligations and other obligations for

the deferred purchase price of property, goods or services (other than trade payables or accruals incurred in the Ordinary Course of Business), (d) for the capitalized liability under all capital leases of such Person (determined in accordance with GAAP), (e) in respect of letters of credit and bankers' acceptances, (f) for Contractual Obligations relating to interest rate protection, swap agreements and collar agreements, and (g) in the nature of Guarantees of the obligations described in clauses (a) through (f) above of any other Person.

“Earnout Payments” means payments the Buyer is required to make to the Sellers and Phantom Plan Participants pursuant to Sections 2.7 and the Phantom Plan Payment Agreement.

“Earn-Out Period 1” means the period from January 1, 2011 to December 31, 2011.

“Earn-Out Period 2” means the period from January 1, 2012 to December 31, 2012.

“ELT” means Elettronica S.p.A.

“Employee Plan” means any plan, program, policy, arrangement or Contractual Obligation, whether formal or informal, whether or not reduced to writing, and whether covering a single individual or a group of individuals, that is (a) a welfare plan within the meaning of Section 3(1) of ERISA, (b) a pension benefit plan within the meaning of Section 3(2) of ERISA, (c) a stock bonus, stock purchase, stock option, restricted stock, stock appreciation right or similar equity-based plan or (d) any other deferred-compensation, retirement, severance, welfare-benefit, reimbursement, bonus, profit-sharing, incentive or fringe-benefit plan, program or arrangement.

“Encumbrance” means any lien, pledge, security interest, mortgage, deed of trust, right of way, easement, encroachment, servitude, and any other like encumbrance, further including, with respect to any security or Equity Interest, any claim, community or other marital property interest, equitable or ownership interest, or other restrictions governing the voting, transfer, receipt of income or exercise of any other attribute of ownership (other than any restriction on the transfer of such security or Equity Interest arising solely under federal and state securities laws). “Encumbered” means subject to any Encumbrance.

“Enforceable” means, with respect to any Contractual Obligation stated to be Enforceable by or against any Person, that such Contractual Obligation is a legal, valid and binding obligation of such Person enforceable by or against such Person in accordance with its terms, except to the extent that enforcement of the rights and remedies created thereby is subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

“Environmental Laws” means any Legal Requirement relating to (a) releases or threatened releases of Hazardous Substances, (b) pollution or protection of public health or the environment or worker safety or health or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances.

“Equity Interest” means, with respect to any Person, (a) any capital stock, partnership or membership interest, unit of participation or other similar interest (however designated) in such Person and (b) any option, warrant, purchase right, conversion right, exchange right or other Contractual Obligation which would entitle any other Person to acquire any such interest in such Person or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974.

“Escrowed Amount” means \$6,200,000.

“Facilities” means any buildings, plants, improvements or structures located on the Real Property.

“Family Member” means, with respect to any individual, (a) such Person’s spouse, (b) each parent, brother, sister or child of such Person or such Person’s spouse, (c) the spouse of any Person described in clause (b) above, (d) each child of any Person described in clauses (a), (b) or (c) above, (e) each trust created for the benefit of one or more of the Persons described in clauses (a) through (d) above and (f) each custodian or guardian of any property of one or more of the Persons described in clauses (a) through (e) above in his or her capacity as such custodian or guardian. Notwithstanding the foregoing, for purposes of the term “Affiliate” as used in Section 6.4, “Family Member” with respect to any Person means (a) such Person’s spouse and (b) any Person residing in such Person’s household.

“GAAP” means generally accepted accounting principles in the United States consistently applied.

“Government Order” means any order, writ, judgment, injunction, decree, stipulation, ruling, decision, verdict, determination or award made, issued or entered by or with any Governmental Authority.

“Governmental Authority” means any United States federal, state or local or any foreign government, or political subdivision thereof, or any multinational governmental organization or authority, or any other governmental authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

“Guarantee” means, with respect to any Person, (a) any guarantee of the payment or performance of, or any contingent obligation in respect of, any Debt or other Liability of any other Person, (b) any other arrangement whereby credit is extended to any obligor

(other than such Person) on the basis of any promise or undertaking of such Person (i) to pay the Debt or other Liability of such obligor, (ii) to purchase any obligation owed by such obligor, (iii) to purchase or lease assets under circumstances that are designed to enable such obligor to discharge one or more of its obligations or (iv) to maintain the capital, working capital, solvency or general financial condition of such obligor and (c) any liability as a general partner of a partnership or as a venturer in a joint venture in respect of Debt or other Liabilities of such partnership or venture.

“Hazardous Substance” means any pollutant, petroleum, or any fraction thereof, contaminant or toxic or hazardous material (including toxic mold), substance or waste.

“Indemnified Person” means, with respect to any Indemnity Claim, each Buyer Indemnified Person or Seller Indemnified Person asserting the Indemnity Claim (or on whose behalf the Indemnity Claim is asserted) under Section 9.1 or 9.2, as the case may be (it being understood that, as contemplated by Section 11.4, the Sellers’ Representative will be the sole and exclusive agent, representative and attorney-in-fact for each of the Sellers for all purposes of asserting Indemnity Claims, receiving and giving notices and service of process in respect thereof, making filings with any court or other Governmental Authority in respect thereof and controlling and otherwise making all decisions in connection with each Indemnity Claim brought on behalf of any Sellers under Section 9.2 (other than in respect of Section 6.8), and the term “Indemnified Person” shall mean the Sellers’ Representative to the extent that it is acting in such capacity on behalf of any Sellers).

“Indemnifying Party” means, with respect to any Indemnity Claim, the party or parties against whom such Indemnity Claim has been asserted (it being understood that, without in any way limiting the Sellers’ payment and other obligations under any Contractual Obligation or Governmental Order arising out of, relating to, or resulting from any Indemnity Claim, as contemplated by Section 11.4, the Sellers’ Representative will be the sole and exclusive agent, representative and attorney-in-fact for each of the Sellers for all purposes of responding to and defending Indemnity Claims, receiving and giving notices and service of process in respect thereof, making filings with any court or other Governmental Authority in respect thereof, controlling and otherwise making all decisions on behalf of each of the Sellers in connection with each Indemnity Claim brought against any of the Sellers, and the term “Indemnifying Party” shall mean the Sellers’ Representative when it is acting in such capacity on behalf of any or all of the Sellers).

“Indemnity Claim” means a claim for indemnity under Section 9.1 or 9.2, as the case may be.

“Intellectual Property Rights” means any or all statutory and/or common rights of every kind and nature throughout the world, in, arising out of, or associated with:

(a) patents, utility models and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof and patentable inventions;

(b) copyrights, works of authorship, including computer programs, source code and executable code, whether embodied in software, firmware, documentation, designs, files, records, schematics, layouts, or data, and mask works, rights of privacy and publicity, moral rights, database rights provided by law, and all other proprietary rights;

(c) trademarks, trade names, service marks, service names, brands, trade dress and logos, and the goodwill associated therewith;

(d) domain names, web addresses and uniform resource locators (URLs);

(e) confidential information, trade secrets, and, to the extent confidential discoveries, innovations, know-how, proprietary information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, graphics, illustrations, artwork, documentation, and manuals), including improvements, modifications, works in process, derivatives, or changes, to any of the foregoing;

(f) any other intellectual property or similar corresponding or equivalent rights to any of the foregoing anywhere in the world; and

(g) any and all registrations and applications relating to any of the foregoing.

“Legal Requirement” means any United States federal, state or local or any foreign law, statute, standard, ordinance, code, rule, regulation, resolution or promulgation, or any Governmental Order, or any Permit granted under any of the foregoing, or any similar provision having the force or effect of law.

“Liability” means, with respect to any Person, any liability or obligation of such Person whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether directly incurred or consequential, whether due or to become due and whether or not required under GAAP to be accrued on the financial statements of such Person.

“Licensed Intellectual Property Rights” means Intellectual Property Rights licensed to the Company which are used in and/or necessary for the conduct of the Design & Manufacturing Business as currently conducted.

“Material Adverse Effect” means a material adverse effect on the assets, properties, financial condition, business or results of operations of the Company; provided, however, that in no event shall any of the following be taken into account in the determination of whether a Material Adverse Effect has occurred: (a) any change in any Legal Requirement or GAAP; and (b) any change resulting from conditions affecting any

of the industries in which the Company operates or from changes in general business, financial, political, capital market or economic conditions (including any change resulting from any hostilities, war or military or terrorist attack) but only to the extent such change does not adversely affect the Company more than other companies in its industry.

“Net Working Capital” means the remainder of (a) the current assets of the Company reflected in the line items included in the Net Working Capital Calculation Schedule minus (b) the current liabilities of the Company reflected in the line items included in the Net Working Capital Calculation Schedule, in each case, calculated as of the close of business on the day immediately preceding the Closing Date in accordance with the Accounting Principles and excluding all Services Business Assets and Services Business Liabilities that are transferred to the New Services Entity pursuant to the Services Business Transfer Agreement; provided, that (i) Net Working Capital shall not take into account (x) any cash received upon exercise of the Options, (y) any amounts in respect of deferred Tax assets or liabilities, the current portions of any amounts reflected in the Closing Debt Amount or any accrued liabilities that constitute Seller Transaction Expenses that are paid by the Buyer at Closing pursuant to Section 2.4 or (z) any obligation with respect to withholding Taxes and similar amounts referred to in the last paragraph of Section 2.4(a), to the extent such amounts are withheld from payments made at the Closing, and any related cash held by the Company as a result of such withholding; (ii) unless otherwise agreed by the Sellers’ Representative and the Buyer, all of the reserves used to determine Net Working Capital (whether or not in compliance with GAAP) will be at the levels specified in the Most Recent Balance Sheet; and (iii) no purchase accounting adjustments in respect of the Contemplated Transactions shall be included.

“Net Working Capital Adjustment Amount” means the difference between (a) Net Working Capital and (b) the Net Working Capital Target.

“Net Working Capital Calculation Schedule” means the calculation of Net Working Capital attached as Annex II hereto.

“Net Working Capital Target” means \$3,554,278.

“Ordinary Course of Business” means an action taken by any Person in the ordinary course of such Person’s business that is consistent with the past customs and practices of such Person (including past practice with respect to quantity, amount, magnitude and frequency, standard employment and payroll policies and past practice with respect to management of working capital and the making of capital expenditures) and that is taken in the ordinary course of the normal day-to-day operations of such Person.

“Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or



agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“Owned Intellectual Property Rights” means Intellectual Property Rights owned by or exclusively licensed to the Company which are used in and/or necessary for the conduct of the Design & Manufacturing Business as currently conducted.

“Permits” means, with respect to any Person, any license, franchise, permit, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

“Permitted Encumbrance” means (a) statutory liens for current Taxes not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, (b) mechanics’, materialmen’s, carriers’, workers’, repairers’ and similar statutory liens arising or incurred in the Ordinary Course of Business the existence of which would not constitute an event of default under, or breach of, a Real Property Lease and the Liabilities of the Company in respect of which are not overdue or otherwise in default, (c) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over any Owned Real Property which are not violated in any material respect by the current use and operation of the Owned Real Property, (d) covenants, conditions, restrictions, easements, encumbrances and other similar matters affecting title to but not adversely affecting the value of, or the current occupancy or use of the Owned Real Property or other property in any material respect and (e) liens to secure landlords, lessors or renters under leases or rental agreements (to the extent the applicable Company is not in default under such lease or rental agreement).

“Person” means any individual or any corporation, association, partnership, limited liability company, joint venture, joint stock or other company, business trust, trust, organization, Governmental Authority or other entity of any kind.

“Phantom Equity Plan Payouts” means the total amounts to be paid out under the Phantom Plan Payment Agreement.

“Phantom Equity Plans” means the 2007 Special Cash Incentives Plan, as amended to date, and any award agreements issued thereunder and the other phantom equity agreements identified on Section 3.5 of the Company Disclosure Schedule.

“Post-Closing Tax Period” means a taxable period beginning after the Closing Date, or the portion of a Straddle Period beginning after the Closing Date.

“Publicly Available Software” means each of: (a) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models; and (b) any software that requires as a condition of use, modification and/or

distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributable at no charge.

“Receiver” means the receiver designed by the Company for the JCREW 3.3 program in the form in existence on the Closing Date plus any modifications to or derivative products of such receiver made prior to December 31, 2012.

“Receiver Revenue” means with respect to any period all revenue recognized by the Company, the Buyer or any of its Affiliates with respect to such period from the sale, licensing or other disposition of the Receiver, calculated in accordance with the Specified Accounting Principles. For the avoidance of doubt, Receiver Revenue shall not include non-recurring engineering fees paid by a customer or customer-funded design service and development efforts.

“Representative” means, with respect to any Person, any director, officer, employee, agent, manager, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Seller Transaction Expenses” means all costs, fees and expenses incurred in connection with or in anticipation of the negotiation, execution and delivery of this Agreement and the Ancillary Agreements or the consummation of the Contemplated Transactions or in connection with or in anticipation of any alternative transactions considered by the Company to the extent such costs, fees and expenses are payable or reimbursable by the Company, including, (i) all brokerage fees, commissions, finders’ fees or financial advisory fees, (ii) the fees and expenses of Choate Hall & Stewart LLP and Sullivan Bille PC and all other fees and expenses of legal counsel, accountants, consultants, valuation firms and other experts and advisors so incurred, (iii) all Change of Control Payments and all accrued but unpaid bonus payments to Company employees (including without limitation the bonus payments to be made pursuant to Section 7.1(b), other than payments to be made pursuant to the terms of the Phantom Plan Payment Agreement), and (iv) the cost of any D&O coverage obtained pursuant to Section 6.8. Seller Transaction Expenses will not include the fees of the Escrow Agent pursuant to the Escrow Agreement.

“Services Business Assets” means all assets transferred to the New Services Entity pursuant to the Services Business Transfer Agreement.

“Services Business Liabilities” means all liabilities of any nature assumed by the New Services Entity pursuant to the Services Business Transfer Agreement.

“Specified Accounting Principles” means GAAP applied on a basis consistent with Buyer’s financial statements included in its periodic reports filed under the Securities Exchange Act of 1934.

“Subsidiary” means, with respect to any specified Person, any other Person of which such specified Person, directly or indirectly through one or more Subsidiaries,

(a) owns at least 50% of the outstanding Equity Interests entitled to vote generally in the election of the Board of Directors or similar governing body of such other Person, or (b) has the power to generally direct the business and policies of that other Person, whether by contract or as a general partner, managing member, manager, joint venturer, agent or otherwise.

“Tax” or “Taxes” means (a) any and all federal, state, local, or foreign taxes, charges, fees, levies or other assessments, including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind or any charge of any kind payable to any Governmental Authority in the nature of (or similar to) taxes whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and (b) any liability for the payment of any amounts of the type described in clause (a) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, as a result of any tax sharing or tax allocation agreement, arrangement or understanding, or as a result of being liable for another person’s taxes as a transferee or successor, by Contractual Obligation or otherwise.

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

“Treasury Regulations” means the regulations promulgated under the Code.

(b) In addition to the defined terms in paragraph (a) above, the following terms are defined elsewhere in this Agreement:

| <u>Term</u>                | <u>Section</u> |
|----------------------------|----------------|
| Accounting Firm            | 2.6(e)         |
| Agreement                  | Preamble       |
| Assets                     | 3.9(a)         |
| Base Purchase Price        | 2.2(a)         |
| Buyer                      | Preamble       |
| Buyer Indemnified Person   | 9.1(a)         |
| Claims                     | 6.9            |
| Closing                    | 2.3            |
| Combined Earnout Period    | 2.7(d)         |
| Common Stock               | Recitals       |
| Company                    | Preamble       |
| Company Plan               | 3.14(a)        |
| Company Registrations      | 3.11(c)        |
| Company Stock Plans        | 2.5            |
| Consulting Agreement       | Recitals       |
| Current Liability Policies | 3.21           |

| <u>Term</u>                            | <u>Section</u> |
|--|----------------|
| Design & Manufacturing Business        | Recitals       |
| Earnout Dispute Notice                 | 2.7(e)         |
| Earnout Period 1 Revenue Payment       | 2.7(b)         |
| Earnout Period 2 Revenue Payment       | 2.7(c)         |
| Earnout Statement                      | 2.7(a)         |
| ERISA Affiliate                        | 3.14(a)        |
| Escrow Agent                           | Recitals       |
| Escrow Agreement                       | Recitals       |
| Estimated Closing Balance Sheet        | 2.6(a)         |
| Estimated Closing Statement            | 2.6(a)         |
| Estimated Purchase Price               | 2.6(b)         |
| Final Closing Balance Sheet            | 2.6(e)         |
| Final Closing Statement                | 2.6(e)         |
| Financials                             | 3.6(a)(ii)     |
| Former Option Holders                  | Recitals       |
| Funding Schedule                       | 2.4(a)         |
| Inbound IP Contracts                   | 3.11(d)        |
| Indemnified Parties                    | 6.8            |
| IP Contracts                           | 3.11(d)        |
| Large WC Shortfall Adjustment          | 2.6(f)         |
| Leased Real Property                   | 3.10(a)        |
| Liability Policies                     | 3.21           |
| Losses                                 | 9.1(a)         |
| Material Company Contract              | 3.16(b)        |
| Most Recent Balance Sheet              | 3.6(a)(ii)     |
| Most Recent Balance Sheet Date         | 3.6(a)(ii)     |
| New Services Entity                    | Recitals       |
| Options                                | Recitals       |
| Outbound IP Contracts                  | 3.11(d)        |
| Owned Real Property                    | 3.10(a)        |
| Phantom Plan Payment Agreement         | Recitals       |
| Phantom Plan Participants              | Recitals       |
| Pre-Closing Tax Period                 | 10.1           |
| Proposed Final Closing Balance Sheet   | 2.6(c)         |
| Proposed Final Closing Statement       | 2.6(c)         |
| Purchase Price                         | 2.2(a)         |
| Qualified Plan                         | 3.14(c)        |
| Real Property                          | 3.10(a)        |
| Real Property Leases                   | 3.10(a)        |
| Registered Agent                       | 11.9(d)        |
| Release Date                           | 9.9            |
| Reviewed Financials                    | 3.6(a)(i)      |
| Scheduled Intellectual Property Rights | 3.11(c)        |
| Seller Indemnified Person              | 9.2            |
| Sellers                                | Preamble       |

| <u>Term</u>                          | <u>Section</u> |
|--------------------------------------|----------------|
| Sellers' Representative              | 11.4(a)        |
| Services Business                    | Recitals       |
| Services Business Transfer           | Recitals       |
| Services Business Transfer Agreement | Recitals       |
| Shareholders                         | Preamble       |
| Shares                               | Recitals       |
| Standard Cap                         | 9.1(b)(iii)    |
| Stockholders Agreement               | 6.10(a)        |
| Straddle Period                      | 10.2           |
| Tax Contest Claims                   | 10.6           |
| Third Party Claim                    | 9.4(a)         |
| Transition Services Agreement        | Recitals       |
| Working Capital Dispute Notice       | 2.6(d)         |

Section 1.2. Certain Matters of Construction.

(a) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(b) Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content of the Sections or subsections of this Agreement and shall not affect the construction hereof.

(c) Except as otherwise explicitly specified to the contrary herein, (i) the words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement and reference to a particular Section of this Agreement shall include all subsections thereof, (ii) references to a Section, Exhibit, Annex or Schedule means a Section of, or Exhibit, Annex or Schedule to this Agreement, unless another agreement is specified, (iii) definitions shall be equally applicable to both the singular and plural forms of the terms defined, and references to the masculine, feminine or neuter gender shall include each other gender, (iv) the word "including" means including without limitation, (v) any reference to "\$" or "dollars" means United States dollars and (vi) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, rule or regulation, in each case as amended or otherwise modified from time to time.

(d) The inclusion of an item on any Schedule hereto is not evidence of the materiality of such item for purposes of this Agreement or otherwise, or that such item is a disclosure required under this Agreement. No disclosure in any Schedule relating to any possible breach or violation of any agreement shall be construed as an admission or indication that any such breach or violation exists or has actually occurred, or shall constitute an admission of liability to any third party. The parties intend that each representation, warranty and covenant contained herein

will have independent significance. If any party has breached or violated, or if there is an inaccuracy in, any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached or violated, or in respect of which there is not an inaccuracy, will not detract from or mitigate the fact that the party has breached or violated, or there is an inaccuracy in, the first representation, warranty or covenant.

(e) Unless the context clearly requires otherwise, when used herein “or” shall not be exclusive (*i.e.*, “or” shall mean “and/or”).

(f) Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

## ARTICLE II

### PURCHASE AND SALE OF SHARES; TREATMENT OF OPTIONS; CLOSING

Section 2.1. Purchase and Sale of Shares. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, each of the Sellers shall, severally and not jointly, sell, transfer and deliver to Buyer, free and clear of all Encumbrances, and Buyer shall purchase from each of such Sellers, all of the outstanding Shares held by such Sellers as listed on Annex I.

Section 2.2. Purchase Price. (a) The aggregate consideration for the purchase and sale of the Shares at Closing will be equal to an amount in cash (such aggregate consideration, the “Purchase Price”) calculated as follows:

(i) \$31,000,000 U.S. dollars (the “Base Purchase Price”);

(ii) less the Closing Debt Amount;

(iii) less the amount of any Seller Transaction Expenses not otherwise paid prior to the Closing Date or taken into account in the calculation of Net Working Capital;

(iv) less the payments to be made at Closing to the Phantom Plan Participants pursuant to the Phantom Plan Payment Agreement (including any related withholding pursuant to Section 2.4 and the Phantom Plan Payment Agreement);

(v) plus the total cash payments (including checks) received on the date of this Agreement in connection with the exercise of the Options;

(vi) plus the Net Working Capital Adjustment Amount (if Net Working Capital is greater than the Net Working Capital Target);

or

less the Net Working Capital Adjustment Amount (if Net Working Capital is less than the Net Working Capital Target).

The Purchase Price shall be subject to adjustment in accordance with Sections 2.6 and 2.7 and Article IX.

(b) The Purchase Price shall be paid as follows: (i) an amount equal to the Escrowed Amount will be deposited with the Escrow Agent to be held pursuant to the Escrow Agreement and (ii) the remaining Purchase Price will be paid to the Sellers, pro rata based on the number of shares held by each as set forth on Annex I-A.

Section 2.3. The Closing. The purchase and sale of the Shares (the "Closing") shall take place on the date hereof at the offices of Bingham McCutchen LLP, One Federal Street, Boston MA 02110, immediately after the completion of the Services Business Transfer pursuant to the Services Business Transfer Agreement, subject to the satisfaction or waiver of each of the conditions set forth in Articles VII and VIII hereof (other than those conditions which can be satisfied only at the Closing, but subject to the satisfaction or waiver of such conditions at Closing), or at such other time and place as may be agreed to by the parties hereto (with the Sellers' Representative acting for all the Sellers).

Section 2.4. Closing Deliveries and Payments.

(a) Buyer Closing Deliveries and Payments. Upon the terms and subject to the conditions set forth in this Agreement, the Buyer shall deliver or cause to be delivered at the Closing the payments set forth in Annex IV hereto (the "Funding Schedule"), including:

- the Escrowed Amount to be deposited with the Escrow Agent pursuant to Section 2.2(b);
- the portion of the Purchase Price to be paid to each Shareholder pursuant to Section 2.2;
- the Closing Debt Amount referenced in Section 2.2(a)(ii);
- the Seller Transaction Expenses to be paid by the Buyer at Closing; and
- the payments to be made to the Phantom Plan Participants at Closing pursuant to the Phantom Plan Payment Agreement.

All payments to be made to the Sellers as provided above will be made to the Sellers by wire transfer pursuant to the wire instructions previously delivered by the Sellers to the Buyer. The Buyer and the Company will be entitled to deduct and withhold from any amounts payable under this Agreement any withholding Taxes or other amounts required under the Code or any applicable Legal Requirement to be deducted and withheld in connection with payments to be made under this Agreement and in connection with any withholding obligations arising in connection with the Services Business Transfer and related distribution of the equity of the New Services Entity to the Shareholders. To the extent that any such amounts are so deducted or withheld and paid over to the appropriate Governmental Authority, such amounts will be treated

for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(b) Sellers' Closing Deliveries. Upon the terms and subject to the conditions set forth in this Agreement, each Seller shall deliver or cause to be delivered at the Closing to Buyer, with respect to all Shares to be purchased and sold by such Seller hereunder, certificates representing all of such Shares, duly endorsed (or accompanied by duly executed transfer powers) and in proper form for transfer to Buyer, and with all required tax transfer stamps attached.

Section 2.5. Treatment of Options.

On or prior to the Closing Date, the Board of Directors of the Company (or an authorized committee thereof) shall take any actions necessary to ensure that the Company's stock option plans, programs and arrangements set forth on Section 2.5 of the Company Disclosure Schedule (collectively, the "Company Stock Plans") terminate at Closing, the provisions in any other plan or agreement providing for the issuance, transfer or grant of any Equity Interests of the Company shall terminate at Closing, and no holder of an Option or any participant in any Company Stock Plan or other plan or any party to a Contractual Obligation with the Company shall have any right thereunder to acquire any Equity Interests of the Company.

Section 2.6. Working Capital Adjustment.

(a) Estimated Closing Balance Sheet and Estimated Closing Statement. The Company has prepared in good faith and provided to the Buyer at least three Business Days prior to the Closing Date an estimated pro forma consolidated balance sheet of the Company (giving effect to the Services Business Transfer) as of the close of business on the day immediately preceding the Closing Date (as the same may be adjusted in response to any comments of the Buyer and its Representatives provided prior to the Closing, the "Estimated Closing Balance Sheet"), together with a written statement setting forth in reasonable detail its good faith estimates of the Closing Debt Amount and Net Working Capital, each as derived from the Estimated Closing Balance Sheet, and the Seller Transaction Expenses (as the same may be adjusted in response to any comments of the Buyer and its Representatives provided prior to the Closing, the "Estimated Closing Statement"). The Estimated Closing Balance Sheet and the Company's good faith estimate of Net Working Capital contained in the Estimated Closing Statement are required to be prepared in accordance with the Accounting Principles and the definition of Net Working Capital. Following the delivery of the Estimated Closing Balance Sheet and the Estimated Closing Statement, the Company shall provide the Buyer and its Representatives reasonable access to the work papers and other books and records of the Company for purposes of assisting the Buyer and its Representatives in their review of the Estimated Closing Balance Sheet and the Estimated Closing Statement. Prior to Closing, the parties shall cooperate in good faith to answer any questions and resolve any issues raised by the Buyer and its Representatives in connection with their review of the Estimated Closing Balance Sheet and the Estimated Closing Statement.

(b) Estimated Purchase Price. The Purchase Price payable at Closing under Section 2.2 (the "Estimated Purchase Price") and payments under Section 2.4 shall be calculated



using the estimated Closing Debt Amount, estimated Seller Transaction Expenses and estimated Net Working Capital set forth on the Estimated Closing Statement.

(c) Proposed Final Closing Balance Sheet and Proposed Final Closing Statement. As promptly as possible and in any event within sixty (60) calendar days after the Closing Date, the Company shall prepare or cause to be prepared, and will provide to the Sellers' Representative, a consolidated balance sheet of the Company (giving effect to the Services Business Transfer) as of the close of business on the day immediately preceding the Closing Date (the "Proposed Final Closing Balance Sheet"), together with a written statement setting forth in reasonable detail its proposed final determination of the Closing Debt Amount, the Seller Transaction Expenses and Net Working Capital (the "Proposed Final Closing Statement"). The Proposed Final Closing Balance Sheet and the determination of Net Working Capital reflected on the Proposed Final Closing Statement will be prepared in accordance with the Accounting Principles and the definition of Net Working Capital. The Sellers' Representative and its Representatives shall have reasonable access to the Company's and the Buyer's Representatives and to the work papers and other books and records of the Company for purposes of assisting the Sellers' Representative and its Representatives in their review of the Proposed Final Closing Balance Sheet and the Proposed Final Closing Statement.

(d) Dispute Notice. The Proposed Final Closing Balance Sheet and the Proposed Final Closing Statement (and the proposed final determinations of the Closing Debt Amount, the Seller Transaction Expenses and Net Working Capital reflected thereon) will be final, conclusive and binding on the parties unless the Sellers' Representative provides a written notice (a "Working Capital Dispute Notice") to Buyer no later than the twentieth (20th) Business Day after the delivery to the Sellers' Representative of the Proposed Final Closing Balance Sheet and the Proposed Final Closing Statement. The Seller's Representative shall not be entitled to issue a Working Capital Dispute Notice or otherwise dispute any item set forth in the Proposed Final Closing Balance Sheet or proposed Final Closing Statement except on the grounds that such matter was not prepared on the basis set forth in paragraph (c) above (including the definition of Net Working Capital and the Net Working Capital Calculation Schedule) or contains mathematical errors. Any Working Capital Dispute Notice must set forth in reasonable detail (i) any item on the Proposed Final Closing Balance Sheet or the Proposed Final Closing Statement which the Sellers' Representative believes has not been prepared in accordance with paragraph (c) above (including the definition of Net Working Capital and the Net Working Capital Calculation Schedule) and, to the extent known, the correct amount of such item and (ii) the Sellers' Representative's alternative calculation of the Closing Debt Amount, the Seller Transaction Expenses or Net Working Capital, as the case may be. Any item or amount to which no dispute is raised in the Working Capital Dispute Notice will be final, conclusive and binding on the parties on such twentieth (20th) Business Day.

(e) Resolution of Disputes. Buyer and the Sellers' Representative will attempt to promptly resolve the matters raised in any Working Capital Dispute Notice in good faith. Beginning ten (10) Business Days after delivery of any Working Capital Dispute Notice pursuant to Section 2.6(d), either Buyer or the Sellers' Representative may provide written notice to the other that it elects to submit the disputed items to Ernst & Young LLP's Boston office (the "Accounting Firm"). The Accounting Firm will promptly, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent the Accounting Firm

agrees to comply with these rules, review only those unresolved items and amounts specifically set forth and objected to in the Working Capital Dispute Notice and resolve the dispute with respect to each such specific unresolved item and amount in accordance with this Agreement. The Accounting Firm shall be instructed in writing by the Buyer and Seller's Representative that the Accounting Firm must accept the Proposed Final Balance Sheet and Proposed Final Closing Statement except to the extent that any item was not calculated in accordance with paragraph (c) above (including the definition of Net Working Capital and the Net Working Capital Calculation Schedule) or reflects mathematical errors. In any such case, a single partner of the Accounting Firm selected by such Accounting Firm in accordance with its normal procedures and having expertise with respect to settlement of such disputes shall act for the Accounting Firm in the determination proceeding, and the Accounting Firm shall render a written decision as to each disputed matter, including a statement in reasonable detail of the basis for its decision. In no event shall the decision of the Accounting Firm (i) provide for a calculation of Net Working Capital that is less than the calculation thereof shown in the Proposed Final Closing Statement or greater than the Sellers' Representatives' alternative calculation thereof shown in the Working Capital Dispute Notice or (ii) provide for a determination of any item of Debt reflected in the Closing Debt Amount or any Seller Transaction Expense that is greater in amount than the amount thereof shown in the Proposed Final Closing Statement or less in amount than the Sellers' Representatives' alternative calculation thereof shown in the Working Capital Dispute Notice. The fees and expenses of the Accounting Firm shall be borne by the non-prevailing party (as determined by the Accounting Firm) or if the Accounting Firm determines that neither party could be fairly found to be the prevailing party or makes no determination of any nature on who is the prevailing party, then such fees and expenses shall be borne 50% by the Sellers and 50% by the Buyer. The decision of the Accounting Firm with respect to the disputed items of the Proposed Final Closing Balance Sheet and the Proposed Final Closing Statement submitted to it will be final, conclusive and binding on the parties. As used herein, the Proposed Final Closing Balance Sheet and the Proposed Final Closing Statement, as adjusted to reflect any changes agreed to by the parties and the decision of the Accounting Firm, in each case, pursuant to this Section 2.6, are referred to herein as the "Final Closing Balance Sheet" and the "Final Closing Statement", respectively. Each of the Seller's Representatives and the Buyer agrees to use its commercially reasonable efforts to cooperate with the Accounting Firm (including by executing a customary engagement letter reasonably acceptable to it) and to cause the Accounting Firm to resolve any such dispute as soon as practicable after the commencement of the Accounting Firm's engagement.

(f) Working Capital Adjustment. If any of the Net Working Capital, the Closing Debt Amount or the Seller Transaction Expenses (as finally determined pursuant to this Section 2.6 and as set forth in the Final Closing Balance Sheet and the Final Closing Statement) differs from the estimated amounts thereof set forth in the Estimated Closing Statement, the Combined Purchase Price shall be recalculated using such final figures in lieu of such estimated figures, and (i) the Buyer shall pay to each Seller and, as provided in the Phantom Plan Payment Agreement, to each Phantom Plan Participant, by wire transfer of immediately available funds its Combined Percentage of the amount, if any, by which such re-calculated final Combined Purchase Price exceeds the estimated Combined Purchase Price paid at Closing in accordance with Sections 2.4(a) and 2.6(b) and the Phantom Plan Payment Agreement or (ii) the amount, if any, by which such estimated Combined Purchase Price paid at Closing in accordance with Sections 2.4(a) and 2.6(b) and the Phantom Plan Payment Agreement exceeds such re-calculated

final Combined Purchase Price shall be taken out of the Escrowed Amount by the Buyer; provided, that if such excess amount is greater than 25% of the Escrowed Amount (a "Large WC Shortfall Adjustment"), (i) each Seller will transfer to the Escrow Agent an amount equal to such Seller's Combined Percentage of such excess amount by wire transfer in immediately available funds and (ii) pursuant to the Phantom Plan Payment Agreement each Phantom Plan Participant will transfer to the Escrow Agent a portion of their payments already received in an amount equal to such Phantom Plan Participant's Combined Percentage of such excess amount, and in each case the Escrow Agent will hold these amounts pursuant to the Escrow Agreement. Any portion of the Accounting Firm's fees and any expenses payable hereunder by the Sellers shall be paid out of the Escrowed Amount.

(g) Payments. Any payment due pursuant to Section 2.6(f) shall be made within seven (7) Business Days after the final amount thereof has been determined in accordance with this Section 2.6. In order to effect the foregoing, within two (2) Business Days after the final determination of the amount of any adjustment pursuant to this Section 2.6, the Sellers' Representative and the Buyer agree to provide written instructions to the Escrow Agent in accordance with the Escrow Agreement effecting such release. These joint written instructions will instruct the Escrow Agent that it is to release an amount equal to 25% of the Escrowed Amount to the Sellers and Phantom Plan Participants (subject to any withholding requirements), less any amount to be paid to the Buyer pursuant to this Section 2.6. Notwithstanding the foregoing, in the event there is a Large WC Shortfall Adjustment, the joint written instructions to the Escrow Agent will provide that the Escrow Agent is to release to the Buyer the entire amount of such downward adjustment in the Combined Purchase Price, and the Buyer and Sellers' Representative will send joint written instructions to the Sellers and Phantom Plan Participants directing them to make their respective payments to the Escrow Agent as described in paragraph (f) above.

#### Section 2.7. Earnout.

(a) Earnout Periods; Earnout Statement. Within twenty (20) Business Days following the end of each of Earnout Period 1 and Earnout Period 2, the Buyer shall prepare and deliver to the Sellers' Representative a statement of the Receiver Revenue for sales of the Receiver during the applicable earnout period (each such statement an "Earnout Statement") setting forth in reasonable detail the Receiver Revenue associated with the sales of the Receiver, determined in accordance with the Specified Accounting Principles. The Sellers' Representative and its Representatives shall have reasonable access to the work papers and other books and records of the Buyer and the Company for purposes of assisting the Sellers' Representative and its Representatives in their review of the Earnout Statements, provided, however, the Sellers' Representative agrees that it shall hold (and shall cause its Representatives to hold) all information acquired during any such examination in strict confidence and shall use (and shall cause its Representatives to use) such information for the sole purpose of determining compliance with this Section 2.7.

(b) Determination of Payments for Earnout Period 1. For Earnout Period 1, the Buyer shall pay to the Sellers and the Phantom Plan Participants in cash an Earnout Payment equal to \$2,500,000 if Receiver Revenue is equal to or greater than \$2,400,000 (the "Earnout Period 1 Revenue Payment"). In no event shall the Earnout Period 1 Revenue Payment be

greater than \$2,500,000 and in no event will the Sellers receive the Earnout Period 1 Revenue Payment if Receiver Revenue is less than \$2,400,000 for Earnout Period 1.

(c) Determination of Payments for Earnout Period 2. For Earnout Period 2, the Buyer shall pay to the Sellers and the Phantom Plan Participants in cash an Earnout Payment equal to \$2,500,000 if Receiver Revenue is equal to or greater than \$6,000,000 (the "Earnout Period 2 Revenue Payment"). In no event shall the Earnout Period 2 Revenue Payment be greater than \$2,500,000 and in no event will the Sellers receive the Earnout Period 2 Revenue Payment if Receiver Revenue is less than \$6,000,000 for Earnout Period 2.

(d) Determination of Cumulative Payment. For Earnout Period 1 and Earnout Period 2 (the "Combined Earnout Period"), the Buyer shall pay to the Sellers and the Phantom Plan Participants in cash an Earnout Payment in respect of Receiver Revenue calculated as follows. If Receiver Revenue during the Combined Earnout Period is:

- (i) greater than or equal to \$8,000,000 but less than \$8,400,000, then the applicable Earnout Payment will be \$2,500,000 multiplied by 1.25, minus the sum of the Earnout Period 1 Revenue Payment and Earnout Period 2 Revenue Payment;
- (ii) greater than or equal to \$8,400,000 but less than \$8,800,000, then the applicable Earnout Payment will be \$2,500,000 multiplied by 1.625, minus the sum of the Earnout Period 1 Revenue Payment and Earnout Period 2 Revenue Payment; or
- (iii) greater than or equal to \$8,800,000, then the applicable Earnout Payment will be \$2,500,000 multiplied by 2.0, minus the sum of the Earnout Period 1 Revenue Payment and Earnout Period 2 Revenue Payment.

(e) Earnout Dispute Notice. The Earnout Statements will be final, conclusive and binding on the parties unless the Sellers' Representative provides a written notice (an "Earnout Dispute Notice") to Buyer no later than the twentieth (20th) Business Day after the delivery to the Sellers' Representative of the applicable Earnout Statement. Any Earnout Dispute Notice must set forth in reasonable detail (i) any item on the Earnout Statement which the Sellers' Representative believes has not been prepared in accordance with this Agreement and (ii) the Sellers' Representative's alternative calculation of the Earnout Statement. The Sellers' Representative shall not be entitled to dispute any portion of the Earnout Statements unless the disputed item has not been prepared in accordance with this Section 2.7 (including the definition of Receiver Revenue) or contains mathematical errors. For the avoidance of doubt, the immediately preceding sentence shall not be in derogation of the Buyer's obligations under Section 2.7(j) or the Sellers' rights with respect thereto. Any item or amount to which no dispute is raised in the Earnout Dispute Notice will be final, conclusive and binding on the parties on such twentieth (20th) Business Day and within three (3) Business Days thereafter the Buyer will pay to the Shareholders and Phantom Plan Participants any undisputed portion of the payment reflected in the applicable Earn-Out Statement and Earnout Dispute Notice, pro rata based on their respective Combined Percentages.

(f) Resolution of Earnout Disputes. Buyer and the Sellers' Representative will attempt to promptly resolve the matters raised in any Earnout Dispute Notice in good faith to the

extent such matters relate to the application of the Specified Accounting Principles and the calculation of Receiver Revenue in accordance with the definitions thereof. Beginning ten (10) Business Days after delivery of any Earnout Dispute Notice, either Buyer or the Sellers' Representative may provide written notice to the other that it elects to submit the disputed items to the Accounting Firm. The Accounting Firm will promptly, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to the extent the Accounting Firm agrees to comply with these rules, review only those unresolved items and amounts specifically set forth and objected to in the Earnout Dispute Notice and resolve the dispute with respect to each such specific unresolved item and amount in accordance with this Agreement. The Buyer's and Sellers' Representative will instruct the Accounting Firm that it is to accept the calculations in the Earnout Statements except to the extent that they were not prepared in accordance with this Section 2.7 (including the definition of Receiver Revenue) or contain mathematical errors. In any such case, a single partner of the Accounting Firm selected by such Accounting Firm in accordance with its normal procedures and having expertise with respect to settlement of such disputes shall act for the Accounting Firm in the determination proceeding, and the Accounting Firm shall render a written decision as to each disputed matter, including a statement in reasonable detail of the basis for its decision. The fees and expenses of the Accounting Firm shall be borne equally by the Sellers and the Company. The decision of the Accounting Firm with respect to the disputed items of the Earnout Statement submitted to it will be final, conclusive and binding on the parties. Each of the Seller's Representative and the Buyer agrees to use its commercially reasonable efforts to cooperate with the Accounting Firm (including by executing a customary engagement letter reasonably acceptable to it) and to cause the Accounting Firm to resolve any such dispute as soon as practicable after the commencement of the Accounting Firm's engagement.

(g) Payment. Each Earnout Payment (or undisputed portion thereof) shall be made by the Buyer within three (3) Business Days after the amount thereof has been finally determined in accordance with this Section 2.7 with the payments to each Seller and each Phantom Plan Participant to be based on its Combined Percentage.

(h) Acceleration of Earnout Payments. If prior to December 31, 2012, the Buyer transfers all or substantially all of the Company's assets or stock, including any assets related to the Design & Manufacturing Business that constitute all or substantially all of the Company's assets and whether by sale, merger, consolidation or other transaction, in each case other than to an Affiliate of the Buyer, the Buyer shall either (i) cause the purchaser of the Company's stock or assets to assume the Buyer's obligations under this Section 2.7, which assumption will not relieve the Buyer of its obligations under this Section 2.7, or (ii) immediately pay to the Sellers and the Phantom Plan Participants a cash amount equal to (i) \$5,000,000 minus (b) the aggregate Earnout Payments previously made to the Sellers and the Phantom Plan Participants pursuant to this Section 2.7 and the Phantom Plan Payment Agreement.

(i) Access. The Buyer shall meet with the Sellers' Representative up to four times per year to discuss the Company's performance with respect to the Receiver.

(j) Operating Covenants. During the Combined Earnout Period, the Buyer shall, unless otherwise agreed by the Sellers' Representative, (i) use commercially reasonable efforts to be awarded the subcontract or purchase orders relating to the Receiver and the JCREW 3.3

program and (ii) use commercially reasonable efforts to perform its obligations under such subcontract or purchase orders. This Section 2.7(j) expresses the parties' agreement on the level of effort required by the Buyer to achieve the targets embodied in this Section 2.7, and any judicial or other doctrine creating an implied obligation to use reasonable efforts or other level of efforts is not intended to apply to this Section 2.7. The preceding sentence is not intended to waive the right, if any, of the Sellers to assert a claim under the implied covenant of good faith and fair dealing that the Buyer has acted in bad faith.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

In order to induce the Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, the Company hereby represents and warrants to the Buyer, as of the date hereof and as of the Closing Date, as follows:

Section 3.1. Organization. The name of the Company is "LNX Corporation" and it was incorporated in The Commonwealth of Massachusetts. The Company is duly organized, validly existing and in good standing under the laws of The Commonwealth of Massachusetts. The Company is duly qualified to do business and in good standing in each jurisdiction in which it owns or leases Real Property or conducts business and is required to so qualify, except where failure to be so qualified would not individually, or in the aggregate, have a Material Adverse Effect. The Company has delivered to the Buyer accurate and complete copies of (a) the Organizational Documents of the Company and (b) the minute books of the Company, which contain records of all meetings held of, and other actions taken by, the shareholders, partners, members or other holders of Equity Interests in the Company, the Boards of Directors (or equivalent) of the Company and each committee thereof. The Company does not have any Subsidiaries.

Section 3.2. Power and Authorization.

(a) Contemplated Transactions. The Company has all requisite power and authority necessary for the execution, delivery and performance by it of this Agreement and each Ancillary Agreement to which it is a party. The Company has been duly authorized by all necessary action on the part of the Board of Directors and the shareholders of the Company for the execution, delivery and performance of this Agreement and each such Ancillary Agreement by the Company. This Agreement and each Ancillary Agreement to which the Company is, or will be at Closing, a party (i) have been (or, in the case of Ancillary Agreements to be entered into at Closing, will be when executed and delivered) duly executed and delivered by the Company and (ii) is (or in the case of Ancillary Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of the Company, Enforceable against the Company in accordance with its terms.

(b) Conduct of Business. The Company has all requisite corporate power and authority under its articles of organization, its by-laws and Massachusetts law necessary to own, lease, operate and use its Assets and carry on the Business.

Section 3.3. Authorization of Governmental Authorities. Except as disclosed on Section 3.3 of the Company Disclosure Schedule, no action by (including any authorization by or consent or approval of), or in respect of, or filing with, any Governmental Authority is required by or on behalf of the Company or in respect of the Company, the Business or any Assets of the Company for, or in connection with, (a) the valid and lawful authorization, execution, delivery and performance by the Company of this Agreement or any Ancillary Agreement to which it is, or will be at Closing, a party or (b) the consummation of the Contemplated Transactions.

Section 3.4. Noncontravention. Except as disclosed on Section 3.4 of the Company Disclosure Schedule, none of the authorization, execution, delivery or performance by the Company of this Agreement or any Ancillary Agreement to which it is, or will be at Closing, a party, nor the consummation of the Contemplated Transactions, will:

(a) assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authorities, in each case, as disclosed on Section 3.3 of the Company Disclosure Schedule, conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, any Legal Requirement applicable to the Company, the Business or any Assets of the Company; or

(b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or require any offer to purchase or prepayment of any Debt or Liability under, or result in the creation of any Encumbrance upon or forfeiture of any of the rights, properties or assets of the Company under, any of the terms, conditions or provisions of (i) any material Permit applicable to or otherwise affecting the Company, the Business or any Assets of the Company, (ii) any material contract to which the Company is a party or by which any of its assets are bound, including any Material Company Contract, or (iii) the Organizational Documents of the Company.

Section 3.5. Capitalization of the Company.

(a) Authorized and Outstanding Equity Interests. The entire authorized capital stock (or, where applicable, other Equity Interests) of the Company is as set forth on Section 3.5 of the Company Disclosure Schedule. All of the outstanding Equity Interests of the Company are held of record and, to the Knowledge of the Company, beneficially owned by the Persons in the respective amounts set forth on Section 3.5 of the Company Disclosure Schedule. Except as set forth on Section 3.5 of the Company Disclosure Schedule, the Company has no issued or outstanding Equity Interests and holds no shares of its capital stock (or other Equity Interests) in its treasury. The Company has delivered to the Buyer accurate and complete copies of the stock ledger (or equivalent records) of the Company, which records reflect all issuances, transfers, repurchases and cancellations of shares of capital stock (or other Equity Interests) of the Company. All of the outstanding shares of capital stock (or, where applicable, other Equity Interests) of the Company have been duly authorized, validly issued and are fully paid and non-assessable. The Company has not violated the 1933 Act, any state "blue sky" or securities laws,

any other similar Legal Requirement or any preemptive or other similar rights of any Person in connection with the issuance, repurchase or redemption of any of its Equity Interests.

(b) Encumbrances on Equity Interests, etc. The Company has no Subsidiaries and has never had any Subsidiaries, and has never owned, and does not own, of record or beneficially any Equity Interests in any Person. Except as disclosed on Section 3.5 of the Company Disclosure Schedule: (i) there are no preemptive rights or other similar rights granted by the Company in respect of any Equity Interests in the Company, (ii) to the Knowledge of the Company, there are no Encumbrances on, or other Contractual Obligations relating to, the ownership, transfer or voting of any Equity Interests in the Company, or otherwise affecting the rights of any holder of the Equity Interests in the Company, (iii) except for the Contemplated Transactions, there is no Contractual Obligation, or provision in the Organizational Documents of the Company, which obligates the Company to purchase, redeem or otherwise acquire, or make any payment (including any dividend or distribution) in respect of, any Equity Interest in the Company and (iv) there are no existing rights with respect to registration under the 1933 Act of any Equity Interests in the Company.

Section 3.6. Financial Matters.

(a) Financial Statements. Attached as part of Section 3.6 of the Company Disclosure Schedule are copies of each of the following:

(i) the balance sheets of the Company as of December 31, 2009 and 2008 and the related statements of income and retained earnings and cash flows for the years then ended, accompanied by the Accountants Review Report of Sullivan Bille PC, the Company's certified public accountants (the "Reviewed Financials"); and

(ii) the unaudited balance sheet of the Company as of December 31, 2010 (the "Most Recent Balance Sheet" and the date thereof, the "Most Recent Balance Sheet Date"), and the related unaudited statement of income of the Company for the twelve months then ended (collectively with the Reviewed Financials, the "Financials").

(b) Compliance with GAAP, etc. Except as disclosed on Section 3.6 of the Company Disclosure Schedule, the Financials (including any notes thereto) (i) were prepared in accordance with the books and records of the Company, (ii) have been prepared in accordance with GAAP, consistently applied (except as otherwise stated therein and subject to normal year-end adjustments, the effect of which will not, individually or in the aggregate, be materially adverse) and (iii) fairly present in all material respects the financial position of the Company as of the respective dates thereof and the results of the operations of the Company and changes in financial position for the respective periods covered thereby.

(c) Design & Manufacturing Business. Also included as part of Section 3.6 of the Company Disclosure Schedule are an unaudited balance sheet of the Design & Manufacturing Business as of December 31, 2010 and a statement of income for the twelve months then ended (the "Design & Manufacturing Financials"). The Design & Manufacturing Financials have been prepared by removing all balance sheet items from the balance sheet relating to the Services



Business and removing from the statement of income all items of revenue and expense directly attributable to the Services Business.

(d) Accounts Receivable. All accounts and notes receivable reflected on the balance sheet included in the Design & Manufacturing Financials and all accounts and notes receivable relating to the Design & Manufacturing Business arising subsequent to December 31, 2010 and prior to the Closing Date that will be reflected in the Final Closing Balance Sheet, have arisen or will arise in the Ordinary Course of Business, represent or will represent legal and valid obligations owed to the Company and, to the Company's Knowledge, will not be subject to any contests, claims, counterclaims or setoffs.

(e) Inventory. Subject to all applicable reserves and supplier warranties, all inventory of the Company relating to the Design & Manufacturing Business consists of a quality and quantity usable or salable in the Ordinary Course of Business, except for obsolete items and items of below-standard quality, all of which have been or will be, as applicable, written off or written down to net realizable value in accordance with the Accounting Principles in the Most Recent Balance Sheet and on the Final Closing Balance Sheet.

(f) Banking Facilities. Section 3.6(f) of the Company Disclosure Schedule sets forth an accurate and complete list of (i) each bank, savings and loan or similar financial institution with which the Company has an account or safety deposit box or other similar arrangement, and any numbers or other identifying codes of such accounts, safety deposit boxes or such other arrangements maintained by the Company thereat, and (ii) the names of all Persons authorized to draw on any such account or to have access to any such safety deposit box facility or such other arrangement.

Section 3.7. Absence of Certain Developments. From the Most Recent Balance Sheet Date through the date of this Agreement, (a) no event, change, fact, condition or circumstance has occurred or arisen that has had, or would reasonably be expected to have, a Material Adverse Effect relating to the Design & Manufacturing Business, and (b) except as disclosed on Section 3.7 of the Company Disclosure Schedule and except for a distribution of the shares of the New Services Entity, the Business has been conducted in all material respects in the Ordinary Course Business and has not suffered any loss, damage, destruction or eminent domain taking of any material asset.

Section 3.8. Debt; Guarantees. The Company has no Liabilities in respect of Debt except as set forth on Section 3.8 of the Company Disclosure Schedule. For each item of Debt, Section 3.8 of the Company Disclosure Schedule correctly sets forth the debtor, the Contractual Obligations governing the Debt, the principal amount of the Debt as the date of this Agreement, the creditor, the maturity date, and the collateral, if any, securing the Debt (and all Contractual Obligations governing all related Encumbrances). Except as set forth on Section 3.8 of the Company Disclosure Schedule, the Company has no Liability in respect of a Guarantee of any Debt or other liability of any other Person.

### Section 3.9. Assets.

(a) Ownership of Assets. The Company has good and marketable title to, or, in the case of property held under a lease or other Contractual Obligation, a leasehold interest in, or otherwise has adequate rights to use, all of its tangible personal property relating to the Design & Manufacturing Business, including all tangible personal Assets relating to the Design & Manufacturing Business reflected in the Most Recent Balance Sheet or acquired after the Most Recent Balance Sheet Date, except for such Assets that have been sold or otherwise disposed of since the Most Recent Balance Sheet Date in the Ordinary Course of Business (collectively, the “Assets”). Except as disclosed on Section 3.9(a) of the Company Disclosure Schedule, none of the Assets relating to the Design & Manufacturing Business is subject to any Encumbrance other than a Permitted Encumbrance.

(b) Sufficiency of Assets. The Assets, including the Company Intellectual Property Rights and the Company Products, comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, that are necessary to, or currently used in, the conduct of the Design and Manufacturing Business as currently conducted by the Company.

(c) Condition of Tangible Assets. All of the material fixtures and other material improvements to the Real Property included in the Assets (including any Facilities) and all of the material tangible personal property other than inventory included in the Assets (i) are in all material respects adequate and suitable for their present uses, (ii) are in all material respects in good working order, operating condition and state of repair (ordinary wear and tear excepted), and (iii) have been maintained in all material respects in accordance with normal industry practice.

(d) Investments. Except as set forth in Section 3.9(d) of the Company Disclosure Schedule, the Company (i) does not control, directly or indirectly, or own any direct or indirect Equity Interest in any Person and (ii) is not subject to any obligation to make any investment (in the form of a loan of cash, capital contribution or similar investment) in any Person.

### Section 3.10. Real Property.

(a) Section 3.10(a) of the Company Disclosure Schedule sets forth a list of the addresses of all real property (i) owned by the Company (the “Owned Real Property”), or (ii) leased, subleased or licensed by, or for which a right to use or occupy has been granted to, the Company (the “Leased Real Property,” and together with the Owned Real Property, the “Real Property”). Section 3.10(a) of the Company Disclosure Schedule also identifies (i) with respect to each Owned Real Property, all Persons that use or occupy such Owned Real Property, and (ii) with respect to each Leased Real Property, each lease, sublease, license or other Contractual Obligation under which such Leased Real Property is occupied or used including the date of and legal name of each of the parties to such lease, sublease, license or other Contractual Obligation, and each amendment, modification or supplement thereto (the “Real Property Leases”).

(b) Except as set forth in Section 3.10(b) of the Company Disclosure Schedule, the Company has good and marketable fee simple title in and to the Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.

(c) Except as set forth on Section 3.10(c) of the Company Disclosure Schedule, there are no written or oral leases, subleases, licenses, concessions, occupancy agreements or other Contractual Obligations granting to any other Person the right of use or occupancy of any of the Owned Real Property and there is no Person in possession of any of the Owned Real Property.

(d) The Company has delivered to the Buyer accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect, together with extension notices and other material correspondence, lease summaries, notices or memoranda of lease, estoppel certificates and subordination, non-disturbance and attornment agreements related thereto.

(e) No eminent domain or condemnation Action is pending or, to the Company's Knowledge, threatened, that would preclude or materially impair the use of any Real Property. To the Knowledge of the Company, the Company's current use of the Real Property does not violate in any material respect any restrictive covenant of record that affects any of the Real Property.

(f) Each Facility is supplied with utilities and other services necessary for the operation of such Facility as the same is currently operated, all of which utilities and other services are provided via public roads or via permanent, irrevocable appurtenant easements benefiting the parcel of Real Property. Each parcel of Real Property abuts on, and has direct vehicular access to, a public road, or has access to a public road via a permanent, irrevocable appurtenant easement benefiting the parcel of Real Property, in each case, to the extent necessary for the conduct of the Design & Manufacturing Business as currently conducted.

#### Section 3.11. Intellectual Property.

(a) Company IP. Except as disclosed on Section 3.11(a) of the Company Disclosure Schedule, the Company (i) exclusively owns the entire right, title and interest in and to or has the exclusive right to use all Owned Intellectual Property Rights free and clear of all Encumbrances (other than Permitted Encumbrances), and (ii) to the Knowledge of the Company, has the right to use all Licensed Intellectual Property Rights free and clear of all Encumbrances (other than Permitted Encumbrances). Except with respect to the Company Intellectual Property Rights licensed (A) to the Company under the Inbound IP Contracts identified on Section 3.11(d) of the Company Disclosure Schedule or (B) by the Company under the Outbound IP Contracts identified on Section 3.11(d) of the Company Disclosure Schedule, in each case, to the extent provided in such Inbound IP Contracts, none of the Company Owned Intellectual Property Rights is in the possession, custody, or control of any Person other than the Company.

(b) Infringement. Except as disclosed on Section 3.11(b) of the Company Disclosure Schedule, (i) the conduct of the Business as currently conducted and the manufacture, use, sale, offer for sale, promotion, marketing, distribution, export or import of the Company Products has not infringed upon, misappropriated, or otherwise violated any Intellectual Property Rights of

any Person and is not currently doing so in any manner and/or (ii) the Company has not, within the preceding seven (7) years received any charge, complaint, claim, demand, or notice alleging interference, infringement, misappropriation, or other violation of the Intellectual Property Rights of any Person (including any offers to license or request or demand to refrain from using any Intellectual Property Rights of any Person in connection with the conduct of the Business as currently conducted and/or the manufacture, use, sale, offer for sale, promotion, marketing, distribution, export or import of the Company Products). Except as disclosed on Section 3.11(b) of the Company Disclosure Schedule, to the Company's Knowledge, no Person has infringed upon, misappropriated, or otherwise violated any Company Intellectual Property Rights.

(c) Scheduled Intellectual Property Rights. Section 3.11(c) of the Company Disclosure Schedule contains a complete and accurate list of all patents and patent applications (whether pending or in the process of preparation), registered trademarks, applications for trademark registration, registered copyrights, applications for copyright registrations, and domain names owned by or expressly licensed to the Company as of the date hereof (collectively, the "Company Registrations"). Section 3.11(c) of the Company Disclosure Schedule also identifies (i) each unregistered trademark, service mark, trade name, brand name, slogan or trade dress, and (ii) each unregistered copyright, and (iii) a general description of the Company trade secrets and Company Products, in each case that is owned by or expressly licensed to the Company that, in each case, is material to the Design & Manufacturing Business as currently conducted. For purposes of this Agreement, all items listed on Section 3.11(c) of the Company Disclosure Schedule shall be called "Scheduled Intellectual Property Rights". Section 3.11(c) of the Company Disclosure Schedule specifically identifies those items of Scheduled Intellectual Property Rights that are licensed to the Company, including the identification of the IP Contract pursuant to which each such Intellectual Property Right is licensed. For each of the Company Registrations, Section 3.11(c) of the Company Disclosure Schedule includes the following information: (i) for each patent and patent application, the title, patent number or application serial number, jurisdiction, filing date, date issued (if applicable), inventors, owner of record, and present status thereof; (ii) for each registered trademark and trademark application, the trademark, application serial number or registration number, jurisdiction, filing date, registration date (if applicable), class of goods or services covered, description of goods or services, owner of record, and present status thereof; (iii) for each domain name, the registration date, any renewal date, owner of record, and name of the registrar; (iv) for each copyright registration and copyright application, the title of the work, number and date of such registration or application, owner of record, and jurisdiction; and (v) any actions that must be taken within ninety (90) days after the date hereof for the purposes of obtaining, maintaining, perfecting, preserving, or renewing any Company Registrations, including the payment of any registration, maintenance, or renewal fees or the filing of any responses to office actions, documents, applications, or certificates. To the Knowledge of the Company, each of the Company Registrations is valid, subsisting, and enforceable.

(d) IP Contracts. Section 3.11(d) of the Company Disclosure Schedule identifies under separate headings each Contractual Obligation, whether written or oral, (i) under which the Company uses or licenses Licensed Intellectual Property Rights (other than licenses for generally available software) (the "Inbound IP Contracts"), (ii) under which the Company has granted any Person any right or interest in any Company Intellectual Property Rights (the "Outbound IP Contracts"), and (iii) that otherwise materially limits the Company's use of or ownership rights

in the Company Intellectual Property Rights (including settlement agreements and covenants not to sue) (such Contractual Obligations, together with the Inbound IP Contracts and Outbound IP Contracts, the “IP Contracts”). Except as provided in the Inbound IP Contracts, or as otherwise disclosed on Section 3.11(d) of the Company Disclosure Schedule, the Company does not, as of the Closing Date, owe any royalties or other payments to any Person for the use of any Company Intellectual Property Rights or the manufacture, use, sale, offer for sale, marketing, promotion and/or distribution of any Company Products. The Company has delivered to the Buyer accurate and complete copies of each of the IP Contracts (or, where an IP Contract is an oral agreement, an accurate and complete written description of such IP Contract), in each case, as amended or otherwise modified and in effect.

(e) Title to Company Intellectual Property Rights. Except as disclosed on Section 3.11(e) of the Company Disclosure Schedule, with respect to (A) each item of Company Intellectual Property Rights owned by the Company, and (B) to the Company’s Knowledge, each item of Company Intellectual Property Rights licensed to the Company, such item or right is not subject to any outstanding Government Order specific to such Company Intellectual Property Rights, and no Action (including any opposition, interference, or re-examination) is, to the Knowledge of the Company solely with respect to the Licensed Intellectual Property Rights, pending or threatened, which challenges the legality, validity, enforceability, use, or ownership of such right or item.

(f) Confidentiality and Invention Assignments. The Company has maintained commercially reasonable practices to protect the confidentiality of the Company’s confidential information and trade secrets and, except as disclosed on Section 3.11(f) of the Company Disclosure Schedule, has required all current and former employees and other Persons with access to the Company’s confidential information and/or trade secrets to execute Contractual Obligations (which are Enforceable) requiring them to maintain the confidentiality of such information and/or trade secrets and use such information and/or trade secrets only for the benefit of the Company. All current and former employees and contractors of the Company who contributed to the creation or development of the Company Products and/or the Company Intellectual Property Rights have executed Contractual Obligations (which, to the Knowledge of the Company, are Enforceable) that assign to the Company all of such Person’s Intellectual Property Rights in such contribution.

(g) Open Source Software. Section 3.11(g) of the Company Disclosure Schedule lists all Publicly Available Software contained in or used by the Company in the development of Company Products and describes (i) the applicable software name and version number, (ii) the licensor, (iii) the license under which such code was obtained, (iv) whether (and if so, how) such code was modified by or for the Company, (v) whether (and if so, how) such code was distributed by or for the Company, and (vi) how such code is integrated with or interacts with any other software. Except as disclosed on Section 3.11(g) of the Company Disclosure Schedule, none of the Company Products constitute, contain, or are distributed by the Company together with any Publicly Available Software, and none of the Company Products are subject to any IP Contract or other Contractual Obligation of any Publicly Available Software that would require the Company to divulge to any Person any source code or trade secret that is part of the Company Products or to grant, or purport to grant, to any Person, any rights or immunities under the Owned Intellectual Property Rights or to any Licensed Intellectual Property Rights in a

manner which would exceed or violate the Company's license to such Licensed Intellectual Property Rights

(h) Privacy and Data Security. The Company's use and dissemination of any personally-identifiable information concerning individuals is in compliance in all material respects with all applicable privacy policies, terms of use, Legal Requirements, and Contractual Obligations applicable to the Company or to which the Company is bound. The Company maintains policies and procedures regarding data security and privacy and maintains administrative, technical, and physical safeguards that are commercially reasonable and, in any event, in compliance in all material respects with all applicable Legal Requirements and Contractual Obligations applicable to the Company or to which the Company is bound. To the Company's Knowledge, there have been no security breaches relating to, or violations of any security policy regarding, or any unauthorized access of, any data or information used by the Company. The Contemplated Transactions will not, as of the Closing, violate in any material respect any privacy policy, terms of use, Legal Requirements or Contractual Obligations relating to the use, dissemination, or transfer of any data or information.

Section 3.12. Legal Compliance; Illegal Payments; Permits.

(a) Legal Compliance. Except as otherwise disclosed on Section 3.12(a) of the Company Disclosure Schedule, the Company is not, in any material respect, in breach or violation of, or default under, its Organizational Documents or any Legal Requirement.

(b) Illegal Payments, etc. In the conduct of the Business, the Company (and its Representatives on behalf of the Company) have not (i) directly or indirectly, given, or agreed to give, any illegal gift, contribution, payment or similar benefit to any supplier, customer, governmental official or employee or other Person who was, is or may be in a position to help or hinder the Company (or assist in connection with any actual or proposed transaction) or made, or agreed to make, any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local or foreign public office or (ii) established or maintained any unrecorded fund or asset or made any false entries on any books or records for any purpose.

(c) Permits. The Company has been duly granted all material Permits necessary for the conduct of the Business by it and the ownership use and operation of its Assets. Section 3.12(c) of the Company Disclosure Schedule describes each material Permit affecting, or relating to, the Assets or the Business together with the Governmental Authority responsible for issuing such Permit. Except as disclosed on Section 3.12(c) of the Company Disclosure Schedule, (i) the Permits listed or required to be listed thereon are valid and in full force and effect, (ii) the Company is not, in any material respect, in breach or violation of, or default under, any such material Permit and (iii) to the Company's Knowledge, no fact, situation, circumstance, condition or other basis exists which, with notice or lapse of time or both, would constitute a material breach, violation or default under such Permit or give any Governmental Authority grounds to suspend, revoke or terminate any such Permit.

Section 3.13. Tax Matters. Except as disclosed on Section 3.13 of the Company Disclosure Schedule,

(a) The Company has timely filed, or has caused to be timely filed on its behalf, all Tax Returns required to be filed by it in accordance with all Legal Requirements. All such Tax Returns are true, correct and complete in all material respects. All Taxes owed by the Company (whether or not shown on any Tax Return) have been timely paid in full. No claim has ever been made by a Governmental Authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction, and, to the Company's Knowledge, there is no basis for any such claim to be made. There are no Encumbrances with respect to Taxes upon any Asset other than Permitted Encumbrances for current Taxes not yet due and payable.

(b) The Company has deducted, withheld and timely paid to the appropriate Governmental Authority all Taxes required to be deducted, withheld or paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and the Company has complied with all reporting and recordkeeping requirements.

(c) The Company has collected all material sales and use Taxes required to be collected, and has remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Authorities, or has been furnished properly completed exemption certificates and has maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations.

(d) No Action relating to any Taxes of the Company or with respect to any Taxes due from or with respect to the Company by any Governmental Authority is currently in progress. There is no pending, or to the Company's Knowledge threatened, claim or Action concerning any Tax Liability of the Company. No assessment of Tax has been proposed in writing against the Company or any of its assets or properties and the Company knows of no grounds for any such assessment. The Company has delivered to the Buyer accurate and complete copies of all Tax Returns, examination reports, and statements of deficiencies filed, assessed against, or agreed to by the Company since December 31, 2007.

(e) The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. The Company has not executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or in respect of the Company.

(f) The unpaid Taxes of the Company (i) did not as of the Most Recent Balance Sheet Date exceed the reserve for Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) and (ii) will not exceed that reserve as adjusted for the passage of time through the Closing Date and taken into account in the Final Closing Date Balance Sheet used for purposes of the Net Working Capital adjustment under

Section 2.6 in accordance with the past custom and practice of the Company in filing its Tax Returns.

(g) The Company has not made any payments, or been or is a party to any Contractual Obligation that could result in it making payments, that have resulted or would result, separately or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Code Section 280G or in the imposition of an excise Tax under Code Section 4999 or that were or would not be deductible under Code Sections 162 or 404.

(h) The Company has never been a member of an “affiliated group” within the meaning of Code Section 1504(a) filing a consolidated federal income Tax Return. The Company is not a party to any Contractual Obligation relating to Tax sharing or Tax allocation. The Company has no Liability for the Taxes of any Person under Treasury Regulation 1.1502-6 (or any corresponding provision of state, local or foreign law), as a transferee or successor, by contract or otherwise.

(i) The Company has not filed a consent under Code Section 341(f).

(j) The Company is not or has not been required to make any adjustment pursuant to Code Section 481(a) (or any predecessor provision) (or any corresponding provision of state, local or foreign tax law) by reason of any change in any accounting methods, or will be required to make such an adjustment as a result of the Contemplated Transactions, and there is no application pending with any Governmental Authority requesting permission for any changes in any of its accounting methods for Tax purposes. To the Company’s Knowledge, no Governmental Authority has proposed any such adjustment or change in accounting method of the Company.

(k) The Company will not be required to include any amount in taxable income or exclude any item of deduction or loss from taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any “closing agreement” as described in Code Section 7121 (or any corresponding or similar provision of state, local or foreign Income Tax law) executed on or prior to the Closing Date, (ii) any deferred intercompany gain or excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding provision of state, local or foreign tax law), (iii) installment sale or open transaction disposition made on or prior to the Closing Date, (iv) any prepaid amount received on or prior to the Closing Date, or (v) a deferral of any cancellation of indebtedness income.

(l) Section 3.13 of the Company Disclosure Schedule sets forth the following information with respect to the Company as of the most recent practicable date (as well as on an estimated pro forma basis as of the Closing Date after giving effect to the consummation of the Contemplated Transactions): (i) the basis of the Company in its assets, (ii) the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax, or excess charitable contribution allocated to the Company, (iii) the amount of any deferred gain or loss allocable to the Company arising out of any intercompany transaction and (iv) all material federal income Tax elections. Except as set forth on Section 3.13 of the Company Disclosure Schedule, the Company does not have a net operating loss or other Tax attribute that is presently, or that will become as a result of the Contemplated Transactions, subject to limitation under



Code Sections 383 or 384. The Company has not experienced an ownership change as defined in Code Section 382 prior to the Closing.

(m) The Company has never been either a “distributing corporation” or a “controlled corporation” in a distribution in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(n) The Company has never 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.

(o) The Company has never engaged in any transaction that could give rise to (i) a reporting obligation under Section 6111 of the Code or the regulations thereunder, (ii) a list maintenance obligation under Section 6112 of the Code or the regulations thereunder, or (iii) a disclosure obligation of a “reportable transaction” under Section 6011 of the Code and the regulations thereunder.

#### Section 3.14. Employee Benefit Plans.

(a) Section 3.14 of the Company Disclosure Schedule lists all Employee Plans which the Company sponsors or maintains, or to which the Company contributes or is obligated to contribute, or in respect of which the Company has or may have any Liability (including but not limited to by reason of being or having been treated as a single employer with any other person under Section 414 of the Code of Section 4001(b) of ERISA (an “ERISA Affiliate”), or which benefits any current or former employee, director, consultant or independent contractor of the Company or the beneficiaries or dependents of any such Person (each a “Company Plan”). With respect to each Company Plan, the Company has delivered to the Buyer accurate and complete copies of each of the following: (i) if the plan has been reduced to writing, the plan document together with all amendments thereto, (ii) if the plan has not been reduced to writing, a written summary of all material plan terms, (iii) if applicable, any trust agreements, custodial agreements, insurance policies or material contracts, material administrative agreements and similar material agreements, and investment management or investment advisory agreements, (iv) any summary plan descriptions, employee handbooks or similar material employee communications, (v) in the case of any plan that is intended to be qualified under Code Section 401(a), the most recent determination letter or advisory opinion letter from the IRS and any related material correspondence with the IRS, and any pending request for determination with respect to the plan’s qualification, (vi) in the case of any funding arrangement intended to qualify as a VEBA under Code Section 501(c)(9), the IRS letter determining that it so qualifies, (vii) in the case of any plan for which Forms 5500 are required to be filed, the three most recently filed Forms 5500, with schedules attached, (viii) any notices, letters or other correspondence from the IRS or the Department of Labor relating to such Company Plan with respect to any issue of noncompliance, and (ix) any written policies or procedures used in and material to the administration of such Company Plan.

(b) Neither the Company nor any ERISA Affiliate of the Company has ever maintained or contributed to or incurred any Liability in respect of a plan subject to Title IV of ERISA or Code Section 412, including any “multiemployer plan” as defined in Section

4001(a)(8) of ERISA, and no condition exists that presents a material risk to the Company of incurring a material liability under Title IV of ERISA or Section 412 or Section 430 of the Code.

(c) Each Company Plan which is intended to qualify under Code Section 401(a) (a “Qualified Plan”) has been determined to be so qualified by the Internal Revenue Service (or, where there is no determination letter but the Qualified Plan is based upon a master and prototype or volume submitter form, the sponsor of such form has received a current advisory opinion as to the form upon which the Company, subject to the terms of such advisory opinion letter, is entitled to rely under applicable Internal Revenue Service procedures) and, to the Knowledge of the Company, nothing has occurred which has resulted or is likely to result in the revocation of such qualification or which requires or could reasonably be expected to require action under the compliance resolution programs of the Internal Revenue Service to preserve such qualification. Each Company Plan, including any associated trust or fund, has been administered in all material respects in accordance with its terms and any applicable collective bargaining agreements and with applicable Legal Requirements, and nothing, to the Knowledge of the Company, has occurred with respect to any Company Plan that has subjected or could reasonably be expected to subject the Company to a penalty under Section 502 of ERISA or to an excise tax under the Code, or that has subjected or could reasonably be expected to subject any participant in, or beneficiary of, a Company Plan to a tax under Code Section 4973. Each Company Plan that is a qualified defined contribution plan has been administered in all material respects as an “ERISA section 404(c) Plan” within the meaning of Department of Labor regulations section 2550.404c-1(b).

(d) All required contributions to, and premium payments on account of, each Company Plan have been made on a timely basis, as applied through the Closing Date. To the Knowledge of the Company, the fair market value of the assets of each Company Plan for which a separate fund of assets is or is required to be maintained, as of the end of the most recently ended plan year of that Plan, equals or exceeds the present value of all benefits liabilities under that Plan. None of the assets of any Company Plan include any capital stock or other securities issued by the Company or any ERISA Affiliate of the Company.

(e) There is no pending, or to the Company’s Knowledge, threatened Action or other legal proceeding relating to a Company Plan or any fiduciary or service provider thereof, other than routine claims in the Ordinary Course of Business for benefits provided for by the Company Plans, and to the Knowledge of the Company there is no reasonable basis for any such Action or legal proceeding. No Company Plan is or, within the last six years, has been the subject of an examination or audit by a Governmental Authority, is the subject of an application or filing under, or is a participant in, a government-sponsored amnesty, voluntary compliance, self-correction or similar program.

(f) Except as required under Section 601 *et seq.* of ERISA or applicable state insurance laws, no Company Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment.

(g) The exercise price of each Option is no less than the fair market value of a share of Common Stock determined on the date of grant of such Option (and as of any later modification thereof within the meaning of Section 409A of the Code). Each “nonqualified

deferred compensation plan” (as defined in Code Section 409A(d)(1) and applicable regulations) with respect to any service provider to the Company (i) complies and has been operated in material compliance with the requirements of Code Section 409A and regulations promulgated thereunder, or (ii) is exempt from compliance under the “grandfather” provisions of IRS Notice 2005-1 and applicable regulations and has not been “materially modified” (within the meaning of IRS Notice 2005-1 and Treasury Regulations §1.409A-6(a)(4)) subsequent to October 3, 2004.

(h) The Company has not undertaken to maintain any Company Plan for any period of time, and to the Knowledge of the Company each Company Plan and any related contracts may be amended or terminated without penalty other than the payment of benefits, fees or charges accrued or incurred through the date of termination. No communication, report or disclosure has been made which, at the time made, did not accurately reflect the material terms and operations of any Company Plan in all material respects. Except to the extent required by applicable Legal Requirements, the Company has not announced its intention, or undertaken (whether or not legally bound) to modify or terminate any Company Plan or adopt any arrangement or program which, once established, would come within the definition of a Company Plan.

(i) With respect to each Company Plan that is primarily subject to Legal Requirements of a jurisdiction outside the United States, each such plan required to be registered has been registered and is in good standing with applicable Governmental Authorities, all contributions required to be made to or in connection with each such plan have been made and each such plan has been established and administered in all material respects in accordance with its terms and all applicable Legal Requirements.

(j) To the Knowledge of the Company, the Company has no Liability, including under any Company Plan, arising out of the treatment of any service provider as a consultant or independent contractor and not as an employee, or vice-versa.

(k) The execution of this Agreement and the consummation of the Contemplated Transactions will not, by itself or in combination with any other event (regardless of whether that other event has occurred or will occur), other than any voluntary decision by the Company after the Closing to amend the terms of any Contractual Obligation with any current or former director, officer, consultant or employee of the Company, result in any payment (whether of severance pay or otherwise) becoming due from or under any Company Plan to any current or former director, officer, consultant or employee of the Company or result in the vesting, acceleration of payment, or increases in the amount of any benefit payable to or in respect of any such current or former director, officer, consultant or employee.

Section 3.15. Environmental Matters. Except as set forth in Section 3.15 of the Company Disclosure Schedule, (a) the Company is, and has been, in compliance in all material respects with all Environmental Laws, (b) there has been no release or threatened release of any material amount of any Hazardous Substance on, upon, into or from any site currently or heretofore owned, leased or otherwise operated or used by the Company, (c) there have been no Hazardous Substances generated by the Company that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local “superfund” site list or any other similar list of hazardous or toxic waste sites published by any Governmental

Authority in the United States, and (d) there are no underground storage tanks located on, no PCBs (polychlorinated biphenyls) or PCB-containing equipment used or stored on, and no hazardous waste as defined by the Resource Conservation and Recovery Act stored on, any site owned or operated by the Company, except for the storage of hazardous waste in compliance with Environmental Laws.

Section 3.16. Contracts.

(a) Contracts. Except as disclosed in the applicable subsection of Section 3.16 of the Company Disclosure Schedule (which is arranged in subsections numbered (i) to (xiv) to correspond to the subsections of this Section 3.16 of the Company Disclosure Schedule), the Company is not bound by or a party to:

(i) any Contractual Obligation (or group of related Contractual Obligations) for the purchase, sale, construction, repair or maintenance of inventory, raw materials, commodities, supplies, goods, products, equipment or other property, or for the furnishing or receipt of services, in each case, the performance of which will extend over a period of more than one year or which provides for (or would be reasonably expected to involve) annual payments to or by the Company in excess of \$100,000 or aggregate payments to or by the Company in excess of \$200,000;

(ii) any Contractual Obligation relating to the acquisition or disposition by the Company of (A) any business (whether by merger, consolidation or other business combination, sale of securities, sale of assets or otherwise) or (B) any material Asset (other than in the Ordinary Course of Business);

(iii) any Contractual Obligation concerning or consisting of a partnership, limited liability company, joint venture or similar agreement;

(iv) any Contractual Obligation under which the Company has permitted any Asset to become Encumbered (other than by a Permitted Encumbrance);

(v) any Contractual Obligation (A) under which the Company has created, incurred, assumed or guaranteed any Debt or (B) under which any other Person has guaranteed any Debt of the Company;

(vi) any Contractual Obligation containing covenants that in any way purport to (A) restrict any business activity (including the solicitation, hiring or engagement of any Person or the solicitation of any customer) by the Company or (B) limit the freedom of the Company or any Affiliate thereof to engage in any line of business or compete with any Person;

(vii) any Contractual Obligation under which the Company is, or may become, obligated to incur any severance pay or Compensation obligations that would become payable by reason of this Agreement or the Contemplated Transactions;

(viii) any Contractual Obligation under which the Company is, or may, have any Liability to any investment bank, broker, financial advisor, finder or other similar

Person (including an obligation to pay any legal, accounting, brokerage, finder's, or similar fees or expenses) in connection with this Agreement or the Contemplated Transactions;

(ix) any Contractual Obligation providing for the employment or consultancy of any Person on a full-time, part-time, consulting or other basis or otherwise providing Compensation or other benefits to any officer, director, employee or consultant (other than a Company Plan and other than any consultancy involving Compensation of less than \$50,000 per year);

(x) any material agency, dealer, distributor, sales representative, marketing or other similar Contractual Obligation;

(xi) any outstanding general or special powers of attorney executed by or on behalf of the Company;

(xii) any Contractual Obligation, other than Real Property Leases, relating to the lease or license of any material Asset, including Company Products and material Intellectual Property Rights (and including all material customer license and maintenance agreements) that is not included on Section 3.11(d) of the Company Disclosure Schedule;

(xiii) any Contractual Obligation under which the Company has advanced or loaned an amount to any of its Affiliates or employees other than in the Ordinary Course of Business; and

(xiv) any other Contractual Obligation between the Company, on the one hand, and any Seller (or Affiliate or Family Member thereof), on the other hand, that will continue in effect after the Closing.

The Company has delivered to the Buyer accurate and complete copies of each written Contractual Obligation listed on Section 3.16 of the Company Disclosure Schedule, in each case, as amended or otherwise modified and in effect. The Company has delivered to the Buyer written summary setting forth all of the material terms and conditions of each oral Contractual Obligation listed on Section 3.16 of the Company Disclosure Schedule.

(b) Enforceability, etc. Each Contractual Obligation required to be disclosed on Section 3.10, Section 3.11, Section 3.14, Section 3.16, Section 3.18 or Section 3.21 of the Company Disclosure Schedule (each, a "Material Company Contract") is Enforceable against the Company and, to the Knowledge of the Company, each other party to such Contractual Obligation, and is in full force and effect, and, subject to obtaining any necessary consents disclosed in Section 3.3 and 3.4 of the Company Disclosure Schedule, will continue to be so Enforceable and in full force and effect without change as a result of the consummation of the Contemplated Transactions.

(c) Breach, etc. The Company or, to the Company's Knowledge, any other party to any Material Company Contract is not in material breach or violation of, or default under, or has repudiated any material provision of, any Material Company Contract.

Section 3.17. Related Party Transactions. Except for the matters disclosed on Section 3.17 of the Company Disclosure Schedule, no Seller or Affiliate of any Seller and no officer or director (or equivalent) of the Company (or, to the Company's Knowledge, any Family Member of any such Person who is an individual or any entity in which any such Person or any such Family Member thereof owns a material interest): (a) has any material interest in any material Asset owned or leased by the Company or used in connection with the Design & Manufacturing Business or (b) has engaged in any material transaction, arrangement or understanding with the Company since January 1, 2009 (other than payments made to, and other Compensation provided to, officers and directors (or equivalent) in the Ordinary Course of Business).

Section 3.18. Customers and Suppliers. Section 3.18 of the Company Disclosure Schedule sets forth a complete and accurate list of (a) the ten largest customers of the Company (measured by aggregate billings) relating to the Design & Manufacturing Business during the twelve month period ended on the Most Recent Balance Sheet Date, indicating the existing Contractual Obligations with each such customer by product or service provided and (b) the ten largest suppliers of materials, products or services to the Company relating to the Design & Manufacturing Business (measured by the aggregate amount purchased by the Company) during the twelve month period ended on the Most Recent Balance Sheet Date. The Company has delivered accurate and complete copies of each document evidencing any Contractual Obligation listed on Section 3.18 of the Company Disclosure Schedule. Except as disclosed on Section 3.18 of the Company Disclosure Schedule, to the Knowledge of the Company, none of such customers or suppliers has cancelled, terminated or otherwise materially altered (including any material reduction in the rate or amount of sales or purchases or material increase in the prices charged or paid, as the case may be) or notified the Company in writing of any intention to do any of the foregoing or threatened in writing to cancel, terminate or materially alter (including any material reduction in the rate or amount of sales or purchases or material increase in the prices charged or paid as the case may be) its relationship with the Company.

Section 3.19. Labor Matters. Except as disclosed on Schedule 3.19, there are no labor troubles (including any work slowdown, lockout, stoppage, picketing or strike) pending, or to the Company's Knowledge, threatened between the Company, on the one hand, and its employees, on the other hand, and there have been no such troubles since January 1, 2009. Except as disclosed on Section 3.19 of the Company Disclosure Schedule, (a) no employee of the Company is represented by a labor union, (b) the Company is not a party to, or otherwise subject to, any collective bargaining agreement or other labor union contract, (c) to the Company's Knowledge, no petition has been filed or proceedings instituted by an employee or group of employees of the Company with any labor relations board seeking recognition of a bargaining representative, (d) to the Company's Knowledge, there is no organizational effort currently being made or threatened by, or on behalf of, any labor union or organized group of Company employees to organize employees of the Company, and (e) no demand for recognition of employees of the Company has been made by, or on behalf of, any labor union. No executive officer's or other key employee's employment with the Company has been terminated for any reason nor has any such officer or key employee notified the Company of his or her intention to resign or retire since July 1, 2010.

Section 3.20. Litigation; Governmental Orders.

(a) Litigation. Except as disclosed on Section 3.20(a) of the Company Disclosure Schedule, there is no Action to which the Company is a party (either as plaintiff or defendant) or to which its Assets are or may be subject that is pending, or to the Company's Knowledge, threatened nor, to the Company's Knowledge, is there any basis for any of the foregoing. Except as disclosed on Section 3.20(a) of the Company Disclosure Schedule, there is no Action which the Company currently intends to initiate.

(b) Governmental Orders. Except as disclosed on Section 3.20(b) of the Company Disclosure Schedule, the Company has received no written copy of, and to the Knowledge of the Company no Governmental Order that specifically names the Company has been issued, that is applicable to the Company or its Assets or the Business.

Section 3.21. Insurance. Section 3.21 of the Company Disclosure Schedule sets forth an accurate and complete list of all insurance policies by which the Company, or any of its Assets, employees, officers or directors (or equivalent) or the Business have been insured since January 1, 2010 (the "Liability Policies") and, with respect to such Liability Policies under which the Company, or any of its Assets, employees, officers or directors (or equivalent) or the Business are currently insured (the "Current Liability Policies"), their respective expiration dates. The list includes for each Liability Policy the type of policy, form of coverage, policy number and name of insurer. The Company has delivered to the Buyer accurate and complete copies of all Liability Policies, in each case, as amended or otherwise modified and in effect. Section 3.21 of the Company Disclosure Schedule describes any self-insurance arrangements affecting the Company. Except as disclosed on Section 3.21 of the Company Disclosure Schedule, to the Knowledge of the Company no insurer (a) has questioned, denied or disputed coverage of any significant claim pending under any Liability Policy or (b) has threatened to cancel any Liability Policy. Except as disclosed on Section 3.21 of the Company Disclosure Schedule, to the Company's Knowledge, no insurer plans to materially increase the premiums for, or materially alter the coverage under, any Current Liability Policy. To the Company's Knowledge, except as disclosed on Section 3.21 of the Company Disclosure Schedule, the Company will after the Closing continue to have coverage under all of the Liability Policies with respect to events occurring prior to the Closing.

Section 3.22. No Liabilities. The Company has no liabilities of any nature, contingent or liquidated, known or unknown, other than liabilities or obligations (i) incurred in the Ordinary Course of Business of the Company, (ii) to the extent reflected in the Final Closing Balance Sheet and Final Closing Statement, (iii) disclosed in other schedules hereto, or (iv) disclosed in Section 3.22 of the Company Disclosure Schedule hereto.

Section 3.23. No Brokers. The Company has no Liability of any kind to, or is subject to any claim of, any broker, finder or agent in connection with the Contemplated Transactions other than those which will be borne by the Sellers.

## INDIVIDUAL REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller severally, and not jointly, hereby represents and warrants to the Buyer, solely as to such Seller, that:

Section 4.1. Organization. In the case of each Seller that is not an individual, such Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

Section 4.2. Power and Authorization. In the case of each Seller that is not an individual, the execution, delivery and performance by such Seller of this Agreement and each Ancillary Agreement to which such Seller is, or will be at Closing, a party and the consummation of the Contemplated Transactions by such Seller are within the power and authority of such Seller and, if applicable, have been duly authorized by such Seller by all necessary action on the part of such Seller (and its Board of Directors (or equivalent) and holders of its Equity Interests). This Agreement and each Ancillary Agreement to which such Seller is, or will be at Closing, a party (a) have been (or, in the case of Ancillary Agreements to be entered into at the Closing, will be when executed and delivered) duly executed and delivered by such Seller and (b) is (or, in the case of Ancillary Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms.

Section 4.3. Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by such Seller of this Agreement and each Ancillary Agreement to which such Seller is, or will be at Closing, a party or (b) consummation of the Contemplated Transactions by such Seller.

Section 4.4. Noncontravention. Neither the execution, delivery and performance by such Seller of this Agreement or any Ancillary Agreement to which such Seller is, or will be at Closing, a party nor the consummation of the Contemplated Transactions by such Seller will:

(a) assuming the taking of all necessary action by (including the obtaining of each necessary authorization, consent or approval) or in respect of, and the making of all filings with, Governmental Authorities violate any provision of any Legal Requirement applicable to such Seller; or

(b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person, or result in the creation of any Encumbrance upon any Shares or Options of such Seller under, any of the terms, conditions or provisions of (i) any Governmental Order applicable to or otherwise affecting such Seller or its assets or properties, (ii) any material



Contractual Obligation of such Seller, or (iii) the Organizational Documents of such Seller (if such Seller is not an individual).

Section 4.5. Title. Such Seller is the record and beneficial owner of the outstanding Equity Interests in the Company, and such Seller has good and marketable title to such Equity Interests, free and clear of all Encumbrances. Without limiting the preceding sentence, each Former Optionholder confirms that he or she has exercised all Options and paid the purchase price for such Options by delivering cash or a check to the Company. Such Seller has full right, power and authority to transfer and deliver to Buyer valid title to the Shares held by such Seller, free and clear of all Encumbrances. Immediately following the Closing, Buyer will be the record and beneficial owner of such Shares and have good and marketable title to such Shares, free and clear of all Encumbrances except as are imposed by Buyer. Except pursuant to this Agreement, there is no Contractual Obligation pursuant to which such Seller has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any Equity Interests in the Company. Except for the Stockholders Agreement, such Seller is not a party to, and the Equity Interests in the Company, are not subject to, any shareholders agreement, voting agreement, voting trust, proxy or other Contractual Obligation relating to the transfer or voting of such Equity Interests.

Section 4.6. No Brokers. Such Seller has caused no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrant to the Sellers that:

Section 5.1. Organization. The Buyer is duly organized, validly existing and in good standing under the laws of The Commonwealth of Massachusetts.

Section 5.2. Power and Authorization. The execution, delivery and performance by the Buyer of this Agreement and each Ancillary Agreement to which the Buyer is, or will be at Closing, a party and the consummation of the Contemplated Transactions by the Buyer are within the power and authority of the Buyer and have been duly authorized by all necessary action on the part of the Buyer. This Agreement and each Ancillary Agreement to which the Buyer is, or will be at Closing, a party (a) have been (or, in the case of Ancillary Agreements to be entered into at the Closing, will be when executed and delivered) duly executed and delivered by the Buyer and (b) is (or in the case of Ancillary Agreements to be entered into at the Closing, will be when executed and delivered) a legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms.

Section 5.3. Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by the Buyer of this Agreement and each Ancillary Agreement to

which it is, or will be at Closing, a party or (b) consummation of the Contemplated Transactions by the Buyer.

Section 5.4. Noncontravention. Neither the execution, delivery and performance by either of the Buyer of this Agreement or any Ancillary Agreement to which it is, or will be at Closing, a party nor the consummation of the Contemplated Transactions will:

(a) assuming the taking of any action by (including the obtaining of each necessary authorization, consent or approval) or in respect of, and the making of all filings with, Governmental Authorities, in each case, violate any provision of any Legal Requirement applicable to the Buyer; or

(b) conflict with or result in a breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any action by (including any authorization, consent or approval) or notice to any Person under, any of the terms, conditions or provisions of (i) any Governmental Order applicable to or otherwise affecting the Buyer or its assets or properties, (ii) any material Contractual Obligation of the Buyer, or (iii) the Organizational Documents of the Buyer.

Section 5.5. No Brokers. The Buyer has caused no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions for which the Sellers could be liable.

Section 5.6. Investment Representations.

(a) The Buyer is an “accredited investor” within the meaning of Rule 501 under the Securities Act of 1933. The Buyer understands that the Shares have not been registered under the Securities Act or any other securities laws and are therefore “restricted securities” within the meaning of Rule 144 under the Securities Act of 1933, and the Shares cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act of 1933 and applicable securities laws, or an exemption from registration is then available.

(b) The Buyer is acquiring the Shares for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Shares in a manner that would violate the registration requirements of the Securities Act of 1933.

## ARTICLE VI

### COVENANTS OF THE PARTIES

Section 6.1. Expenses. Each party will pay its own respective financial advisory, legal, accounting and other expenses incurred by it or for its benefit in connection with the preparation and execution of this Agreement and the Ancillary Agreements, the compliance herewith and therewith and the Contemplated Transactions; provided, that all such Seller Transaction Expenses incurred by the Company will be borne by the Sellers as contemplated by Section 2.2.

Section 6.2. Confidentiality.

(a) Confidentiality of the Sellers.

(i) Each Seller acknowledges that the success of the Company after the Closing depends upon the continued preservation of the confidentiality of certain information possessed by such Seller, that the preservation of the confidentiality of such information by such Seller is an essential premise of the bargain between the Sellers and the Buyer, and that the Buyer would be unwilling to enter into this Agreement in the absence of this Section 6.2(a)(i). Accordingly, each Seller hereby severally agrees with the Buyer that such Seller, its Affiliates and its and its Affiliate's Representatives shall not, and that such Seller shall cause its Affiliates and such Representatives not to, at any time on or after the Closing Date, directly or indirectly, without the prior written consent of Buyer, disclose or use, any information involving or relating to the Business or the Company (other than in the case of a Seller that is a director, officer or employee of the Company, in the course of fulfilling his or her duties to the Company in such capacity); provided, that the information subject to this Section 6.2(a)(i) will not include any information generally available to, or known by, the public (other than as a result of disclosure in violation hereof); provided, further, that the provisions of this Section 6.2(a)(i) will not prohibit any retention of copies of records or disclosure (A) required by any applicable Legal Requirement so long as reasonable prior notice is given to Buyer and the Company of such disclosure and a reasonable opportunity is afforded Buyer and the Company to contest the same or (B) made in connection with the enforcement of any right or remedy relating to this Agreement or the Contemplated Transactions. Each Seller agrees that it shall be responsible for any breach or violation of the provisions of this Section 6.2(a)(i) by any of its Affiliates or its or its Affiliates' Representatives.

(ii) Notwithstanding the foregoing, each of the parties hereto and their respective Representatives may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Contemplated Transactions and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

(iii) Notwithstanding the foregoing, the New Services Entity shall be entitled to use and disclose confidential information to the extent permitted under Section 9 of the Transition Services Agreement.

(b) If any Seller breaches, or threatens to commit a breach of, any of the provisions of this Section 6.2, Buyer and the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer or the Company under law or in equity:

(i) the right and remedy to have such provision specifically enforced by any court having jurisdiction, it being acknowledged and agreed that any such breach or

threatened breach may cause irreparable injury to each of Buyer and the Company and that money damages may not provide an adequate remedy to Buyer or the Company; and

(ii) the right and remedy to recover from the Seller all monetary damages suffered by Buyer or the Company, as the case may be, as the result of any acts or omissions constituting a breach of this Section 6.2.

Section 6.3. Publicity. No public announcement or disclosure (including any general announcement to employees, customers or suppliers) will be made by any party with respect to the subject matter of this Agreement or the Contemplated Transactions without the prior written consent of Buyer, the Company and the Sellers' Representative; provided, that the provisions of this Section 6.3 shall not prohibit (a) any disclosure required by any applicable Legal Requirements (in which case the disclosing party will provide the other parties with the opportunity to review and comment in advance of such disclosure) or (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or any Ancillary Agreement or the Contemplated Transactions.

Section 6.4. Noncompetition and Nonsolicitation.

(a) For the Non-Competition Period (as defined below), each Seller listed on Annex V hereto, severally agrees that neither such Seller nor any Affiliate of such Seller shall engage directly or indirectly, as an owner, employee, consultant or otherwise, in any business activity that is competitive with the Design & Manufacturing Business as it is conducted on the Closing Date; provided, that a Seller will not be deemed so engaged solely by reason of being the owner of less than 5% of the outstanding stock of any publicly-traded corporation. For purposes of this covenant, the phrase "competitive with the Design & Manufacturing Business" shall mean any business that designs or manufactures radio frequency, microwave or millimeter wave components and subsystems for defense or commercial applications that are competitive with any product being offered for sale by the Design & Manufacturing Business as of the Closing Date or that is in development by the Design & Manufacturing Business as of the Closing Date. For the Non-Competition Period, each Seller severally agrees that it shall not and shall not permit, cause or encourage any of such Seller's Affiliates to, directly or indirectly as an owner, employee, consultant or otherwise, recruit, offer employment, employ, engage as a consultant, lure or entice away, or in any other manner persuade or attempt to persuade, any Person who is an employee of the Company or the Buyer to leave the employ of the Company or the Buyer, except that the New Services Entity shall have the right to offer employment to and hire Anna Graziosi, Sharon Cucchiaro and Barbara Payson, current employees of the Company, and the New Services Entity shall have the right to offer employment to Jan Conant, at the time and subject to the conditions of (including the consent of the Buyer where required) the Transition Services Agreement. For purposes of this Section 6.4, "Non-Competition Period" means (i) in the case of Lamberto Raffaelli and his Affiliates, the period commencing on the Closing Date and ending two years after the expiration of the term of his consulting relationship under the Consulting Agreement and (ii) in the case of all the other Sellers and their respective Affiliates, means the period of two (2) years from the Closing Date.

(b) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 6.4 is invalid or unenforceable, the parties hereto agree that the court

making the determination of invalidity or unenforceability will have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

(c) If any Seller breaches, or threatens to commit a breach of, any of the provisions of this Section 6.4, Buyer and the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer or the Company under law or in equity:

(i) the right and remedy to have such provision specifically enforced by any court having jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to each of Buyer and the Company and that money damages may not provide an adequate remedy to Buyer or the Company; and

(ii) the right and remedy to recover from such Seller all monetary damages suffered by Buyer or the Company, as the case may be, as the result of any acts or omissions constituting a breach of this Section 6.4.

(d) Sellers acknowledge that the restrictions contained in this Section 6.4 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. The covenants contained in this Section 6.4 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 6.5. Interest on Overdue Amounts; Set-Offs. (a) For purposes of this Agreement, in the event any payment is due under this Agreement and not paid when due, such overdue amount shall bear interest from the third Business Day after the date due up to and including the date of payment, at a rate per annum of 6.00%. In addition, in the event that the Buyer or the Seller's Representative disputes that any amount is due and owing under this Agreement (including without limitation pursuant to Section 2.7, Article IX or Article X), when the disputed amount is resolved, the party paying such amount shall also pay interest from the date first disputed until paid, at 6.00% per annum.

(b) The Buyer and the Company may set off any amount it owes under this Agreement to any Seller against any amount owed by such Seller to the Buyer or the Company; provided that except as provided in the last sentence of Section 10.9, the Buyer and the Company will not set off against amounts owed to the Sellers in order to satisfy a claim for indemnification under Article IX if at that time there are sufficient funds held pursuant to the Escrow Agreement to satisfy such claim that are not subject to another pending claim under the Escrow Agreement.

Section 6.6. Further Assurances. From and after the Closing Date, upon the request of either the Sellers' Representative or the Company, each of the parties hereto shall do, execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the Contemplated Transactions. Except for the hirings permitted under Section 6.4(a), at any time prior to two (2) years after the Closing Date no Seller shall take any action that is specifically designed or intended to have the effect of discouraging any lessor, licensor, supplier, distributor or customer of the Company or other Person with whom the Company has a relationship from maintaining the same relationship with the Company after the Closing as it maintained prior to the Closing.

Section 6.7. Certain Employment and Employee Benefits Matters. Except as otherwise provided herein Buyer and the Company are under no obligation to hire or retain any employee, independent contractor or consultant, or, except as provided pursuant to any Contractual Obligation disclosed in Section 3.14 or Section 3.15 of the Company Disclosure Schedule, provide any employee, independent contractor or consultant with any particular benefits, or make any payments or provide any benefits to those employees, independent contractors or consultants whom the Buyer or the Company chooses not to employ or subsequently terminates, except as otherwise required by applicable law.

Section 6.8. Directors' and Officers' Indemnification and Insurance.

(a) For a period of six (6) years after the Closing Date, in the event of any threatened or actual Action, whether civil, criminal or administrative, in which any person who is now, or has been at any time prior to the Closing, a director or officer of the Company (the "Indemnified Parties") is, or is threatened to be, made a party thereto based in whole or in part on (i) the fact that such person is or was a director or officer of the Company or (ii) this Agreement or any of the transactions contemplated hereby, whether in any case asserted or arising before, on or after the Closing, the Company shall indemnify and hold harmless such person from and against such Action to the full extent required under, and subject to the terms and conditions of, the Company's Articles of Organization as in effect on the date hereof.

(b) Prior to the Closing Date, the Company shall purchase an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage for the Company's directors and officers in a form acceptable to the Sellers' Representative that shall provide such directors and officers with coverage for six years following the Effective Time of not less than the existing coverage and have other terms not materially less favorable to the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company. The cost of such coverage shall be a Seller Transaction Expense.

(c) The provisions of this Section 6.8 are intended to be for the benefit of, and enforceable by, each Indemnified Party and such Indemnified Party's estate, administrators, executors, heirs and representatives, and nothing herein shall affect any indemnification rights that any such person may have under the Company's Organizational Documents, any contract or applicable law.

(d) The obligations of the Buyer and the Company under this Section 6.8 shall continue in full force and effect for a period commencing as of the Closing and ending as of the sixth anniversary of the Closing Date; provided, that all rights to indemnification in respect of any matter for which indemnification under this Section 6.8 has been asserted or made within such period shall continue until the final disposition of such matter.

(e) In the event that all or substantially all of the business or assets of the Company are sold, whether by merger, consolidation, sale of assets or securities or otherwise, in one transaction or a series of transactions, then the Buyer and the Company shall, in each such case, take action to ensure that the successors and assigns of the Company assume the obligations set forth in this Section 6.8. The provisions of this Section 6.8 shall apply to all of the successors and assigns of the Company.

Section 6.9. Release by Sellers. Effective as of the Closing, each of the Sellers hereby releases the Company, its successors and assigns and its Affiliates, directors and officers from any claim, demand, lien, liability, debt, right, set-off, trespass, tort, wrong, covenant, action, suit, expense, damage, judgment, order and liability of whatever kind or nature, in law or in equity, under contract, in tort, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden, that were or could have been asserted in any suit, arbitration or mediation, in any jurisdiction, state, federal or otherwise, under any law, state, federal or otherwise, arising out of or relating to, in whole or in part, any action, omission, incident, event, fact or circumstance existing or occurring on or prior to the Closing Date (collectively, "Claims") and relating to (i) any claim that such Seller or any Affiliate or Family Member of such Seller has any right to acquire (by purchase or otherwise) any Equity Interest in the Company or any subsidiary of the Company, receive any bonus or similar amount from the Company or any subsidiary of the Company (other than with respect to bonus plans identified on Schedule 3.14 hereto) or acquire any asset of the Company or any subsidiary of the Company, other than in the case of any Phantom Plan Participants, the payments to be made pursuant to the Phantom Plan Payment Agreement, in the case of Mr. Raffaelli, payments to be made pursuant to the Consulting Agreement, and, in the case of ELT, any claims arising under any Contractual Obligation to which ELT is a party and disclosed in Section 3.16 of the Company Disclosure Schedule, and (ii) any Claims relating to the bonuses paid pursuant to Section 7.1(b) below or the share transfers described in Section 7.1(c) below or related to the payments to be made pursuant to the Phantom Plan Payment Agreement (other than, with respect to any Seller that is a Phantom Plan Participant, any claim for payment under the Phantom Plan Payment Agreement).

Section 6.10. Termination of Certain Agreements.

(a) Effective on the Closing, Sellers and the Company hereby agree that the Stockholders' Agreement dated February 21, 2003, as amended to date (the "Stockholders Agreement"), shall automatically terminate and be of no further force and effect.

(b) The Company agrees that effective at the Closing it will terminate the 2007 Special Cash Incentives Plan so no more awards may be made thereunder, and deliver evidence of such termination to the Buyer at the Closing.

ARTICLE VII

CONDITIONS TO THE OBLIGATIONS OF THE BUYER AT THE CLOSING

The obligations of the Buyer to consummate the Contemplated Transactions is subject to the fulfillment, or, to the extent permitted by law, waiver by the Buyer, of each of the following conditions:

Section 7.1. Completion of Certain Transfers. (a) The Company shall have completed the Services Business Transfer in form and substance reasonably satisfactory to the Buyer and its counsel.

(b) The Company shall have paid the bonuses set forth on Section 7.1(b) of the Company Disclosure Schedule.

(c) Mr. Raffaelli shall have transferred the Shares referred to in Section 10.8, and shall have received any approvals or waivers required under the Stockholders Agreement to effect such transfers, and the Buyer shall have received reasonably satisfactory evidence of the foregoing.

Section 7.2. Receipt of Third-Party Valuation of the Services Business and Tax Basis Computation. The Company shall have obtained, at the sole expense of the Sellers, from a third-party valuation firm a report on the value of the Services Business in form and substance reasonably satisfactory to the Buyer and its counsel. The Company shall also provide to the Buyer a detailed tax basis computation for the Services Business.

Section 7.3. Delivery of Securities; Instruments of Transfer. Each of the Shareholders will have delivered to Buyer a certificate or certificates, duly endorsed (or accompanied by one or more duly executed transfer powers) evidencing all of the Shares to be transferred to Buyer hereunder by such Shareholder.

Section 7.4. Delivery of Closing Certificates. The Company and the Sellers shall have delivered to the Buyer the following:

(a) Secretary's Certificate: A certificate, dated as of the Closing Date, signed by the Secretary of the Company certifying as to (i) the names and incumbency of each of the officers of the Company executing this Agreement or any Ancillary Agreement, (ii) the Organizational Documents of the Company, (iii) all resolutions adopted by the Board of Directors of the Company in connection with this Agreement and the Contemplated Transactions, and (iv) such other matters as reasonably requested by counsel for the Buyer;

(b) FIRPTA Certificate: A certificate in the form of Exhibit E, dated as of the Closing Date, signed by the Chief Financial Officer of the Company; and

(c) Good Standing Certificate. A certificate of good standing with respect to the Company issued by the Secretary of State's Office of the Commonwealth of Massachusetts, as of a recent date.



Section 7.5. Execution of Consulting Agreement. Lamberto Raffaelli shall have executed the Consulting Agreement with the Buyer.

Section 7.6. Escrow Agreement. The Buyer, the Sellers' Representative and the Escrow Agent shall have executed the Escrow Agreement.

Section 7.7. Qualifications. No provision of any applicable Legal Requirement and no Government Order will prohibit the consummation of any of the Contemplated Transactions.

Section 7.8. Absence of Litigation. No Action will be pending or threatened which seeks a Governmental Order, nor will there be any Governmental Order in effect, (a) which would prevent consummation of any of the Contemplated Transactions, or (b) which would result in any of the Contemplated Transactions being rescinded following consummation.

Section 7.9. Consents, etc. All actions by (including any authorization, consent or approval) or in respect of (including notice to), or filings with, any Governmental Authority or other Person that are required to consummate the Contemplated Transactions listed in Schedule 7.9 will have been obtained or made, in a manner reasonably satisfactory in form and substance to the Buyer, and no such authorization, consent or approval will have been revoked.

Section 7.10. Proceedings and Documents. All corporate and other proceedings in connection with the Contemplated Transactions and all documents incident thereto will be reasonably satisfactory in form and substance to the Buyer and its counsel, and they will have received all such counterpart original and other copies of such documents as they may reasonably request.

Section 7.11. Ancillary Agreements. Each of the Ancillary Agreements will have been executed and delivered to the Buyer by each of the other parties thereto.

Section 7.12. Resignations. The Buyer will have received the resignations, effective as of the Closing, of each officer and director of the Company.

Section 7.13. Payoff Letters and Lien Releases, etc. The Company will have obtained and delivered to the Buyer customary payoff letters and lien release documentation reasonably satisfactory to the Buyer and its counsel and lenders relating to the repayment of all Debt to be repaid at the Closing and the termination of all Encumbrances on any Assets securing any such Debt.

## ARTICLE VIII

### CONDITIONS TO THE SELLERS' OBLIGATIONS AT THE CLOSING

The obligations of the Sellers to consummate the Contemplated Transactions is subject to the fulfillment, or, to the extent permitted by law, waiver by the Sellers' Representative (who shall act for all the Sellers for such purposes) of each of the following conditions:

Section 8.1. Qualifications. No provision of any applicable Legal Requirement and no Government Order will prohibit the consummation of any of the Contemplated Transactions.

Section 8.2. Absence of Litigation. No Action will be pending or threatened which seeks a Governmental Order, nor will there be any Governmental Order in effect, (a) which would prevent consummation of any of the Contemplated Transactions or (b) which would result in any of the Contemplated Transactions being rescinded following consummation.

Section 8.3. Proceedings and Documents. All corporate and other proceedings in connection with the Contemplated Transactions and all documents incident thereto will be reasonably satisfactory in form and substance to the Sellers' Representative and the Company's counsel, and they will have received all such counterpart original and other copies of such documents as they may reasonably request.

Section 8.4. Ancillary Agreements. Each of the Ancillary Agreements to which the Sellers or the Sellers' Representative are party will have been executed and delivered to the Sellers' Representative by each of the other parties thereto (other than the Company, the Sellers, and the Sellers' Representative).

## ARTICLE IX

### INDEMNIFICATION

#### Section 9.1. Indemnification by the Sellers.

(a) Indemnification. Subject to the limitations set forth in this Article IX, from and after the Closing, each Seller shall severally, and not jointly, in accordance with its respective Applicable Indemnity Percentage (or in the case of clauses (iii) and (iv) below, severally and solely as to itself) indemnify and hold harmless the Buyer and its Subsidiaries (including, following the Closing, the Company) (each, a "Buyer Indemnified Person"), from, against and in respect of any and all Actions, Liabilities, Governmental Orders, Encumbrances, losses, damages, bonds, dues, assessments, fines, penalties, Taxes, fees, costs (including costs of investigation, defense and enforcement of this Agreement), expenses or amounts paid in settlement (in each case, including reasonable attorneys' and experts' fees and expenses), whether or not involving a Third Party Claim (collectively, "Losses"), actually incurred or suffered by the Buyer Indemnified Persons or any of them as a result of, arising out of or relating to:

(i) any breach of, or inaccuracy in, any representation, warranty or statement made by the Company in Article III of this Agreement (in each case, assuming that all qualifications contained in this Agreement and the Company Disclosure Schedule as to materiality, the phrase "substantial compliance", the words "material" and "materially" and all similar phrases and words were deleted therefrom);

(ii) any breach or violation of any covenant or agreement of the Company in this Agreement, to the extent required to be performed or complied with by the Company at or prior to the Closing;

- (iii) any breach of, or inaccuracy in, any representation, warranty or statement made by such Seller in Article IV of this Agreement;
- (iv) any breach or violation of any covenant or agreement of such Seller (including under this Article IX) in this Agreement;
- (v) any liabilities or obligations of any nature to the extent relating to the Services Business and any liabilities or obligations subject to the Company's indemnification rights under the Services Business Transfer Agreement;
- (vi) any liabilities or obligations relating to the Phantom Equity Plans, other than payments required to be paid pursuant to the terms of the Phantom Plan Payment Agreement; and
- (vii) any Seller Transaction Expenses that were not paid prior to Closing or reflected in the Purchase Price adjustment process pursuant to Section 2.2.

(b) Monetary Limitation. The obligations to indemnify the Buyer Indemnified Persons pursuant to Sections 9.1(a)(i) and 9.1(a)(iii) shall be subject to the following limitations:

(i) the Sellers will not be responsible for any single Loss (or series of similar or related Losses arising from similar actions or states of fact) of less than \$20,000, except that this clause (i) shall not apply to any claims pursuant to Section 9.1(a)(i) in respect of breaches of, or inaccuracy in, the representations and warranties set forth in Sections 3.1 (Organization), 3.2 (Power and Authorization), 3.3 (Authorization of Governmental Authorities), 3.4(a) (Noncontravention), 3.5 (Capitalization of the Company), 3.8 (Debt; Guarantees), 3.13 (Tax Matters), 3.17 (Related Party Transactions), and 3.23 (No Brokers) and shall not apply to any claims for indemnification pursuant to Section 9.1(a)(iii);

(ii) the Sellers will not be responsible for any Losses unless and only to the extent that the aggregate amount of all such Losses incurred or suffered by the Buyer Indemnified Persons (excluding Losses excluded under clause (i) above) exceeds \$300,000, except that this clause (ii) shall not apply to any claims pursuant to Section 9.1(a)(i) in respect of breaches of, or inaccuracy in, the representations and warranties set forth in Sections 3.1 (Organization), 3.2 (Power and Authorization), 3.3 (Authorization of Governmental Authorities), 3.4(a) (Noncontravention), 3.5 (Capitalization of the Company), 3.8 (Debt; Guarantees), 3.17 (Related Party Transactions), and 3.23 (No Brokers) and shall not apply to any claims for indemnification pursuant to Section 9.1(a)(iii); and

(iii) the maximum liabilities of the Sellers pursuant to Section 9.1(a)(i) shall not exceed an amount equal to 15% of the Base Purchase Price (the "Standard Cap"), except that the total liability of the Sellers pursuant to Section 9.1(a)(i) in respect of breaches of or inaccuracies in the representations and warranties in Sections 3.1 (Organization) (first two sentences only), 3.2(a) (Contemplated Transactions), 3.4 (Noncontravention), 3.5 (Capitalization of the Company), 3.8 (Debt; Guarantees) and 3.13 (Tax Matters), shall not exceed the Base Purchase Price and the total liability of any

Seller pursuant to Section 9.1(a)(iii) relating to any claim in respect of any breaches of or inaccuracies in the representations and warranties in Section 4.3 shall not exceed the Standard Cap and the total liability of any Seller under Section 9.1(a)(iii) shall not exceed the total proceeds paid (or that would be payable absent the claim for indemnity) to such Seller pursuant to this Agreement.

Claims for indemnification pursuant to any other provision of Section 9.1(a) are not subject to the monetary limitations set forth in this Section 9.1(b).

(c) Other Limitations. Notwithstanding anything to the contrary contained herein, no Seller shall be liable for more than its Applicable Indemnity Percentage of any Loss subject to indemnification under Sections 9.1(a)(i), 9.1(a)(ii), Section 9.1(a)(v), Section 9.1(a)(vi) or Section 9.1(a)(vii). The Sellers shall have no obligation to indemnify or hold harmless the Buyer Indemnified Parties for any matter to the extent addressed in the final determination of Net Working Capital, including any reserves, pursuant to Section 2.6.

(d) As an example of the application of the various dollar-denominated thresholds and limits set forth above, with respect to ELT, whose Applicable Indemnity Percentage is 24.110% with respect to Losses fully covered by the Escrowed Amount and 26.958% with respect to Losses not fully covered by the Escrowed Amount:

- ELT shall be responsible for a portion of the claims made under Section 9.1(a)(i), (ii), (v), (vi) or (vii), based on its Applicable Indemnity Percentage, and subject, if applicable, to the threshold, deductible and cap amounts set forth in paragraphs (b) (i), (ii) and (iii) above;
- ELT shall be responsible for all of the claims made under Section 9.1(a)(iii) or (iv) relating to a breach of or inaccuracies in any of its representations, warranties or covenants;
- ELT's maximum liability will not exceed the total proceeds paid (or that would be payable absent the claim for indemnity) to it pursuant to this Agreement; and
- ELT shall not be responsible under Sections 9.1(a)(iii) or (iv) for, and its share of the Escrowed Amount shall not be diminished by, breaches by other Sellers of their own representations, warranties and covenants.

Section 9.2. Indemnification by the Buyer. Subject to the limitations set forth in this Article IX, from and after the Closing, the Buyer shall indemnify and hold harmless each of the Sellers (each, a "Seller Indemnified Person"), from, against and in respect of any and all Losses actually incurred or suffered by the Seller Indemnified Persons or any of them as a result of, arising out of or relating to:

- (i) any breach of, or inaccuracy in, any representation, warranty or statement made by the Buyer in Article V of this Agreement; or
- (ii) any breach or violation of any covenant or agreement of the Buyer (including under this Article IX) or any covenant or agreement of the Company to the

extent required to be performed or complied with by the Company after the Closing, in either case in this Agreement.

Section 9.3. Time for Claims; Notice of Claims.

(a) Time for Claims. No claim may be made or suit instituted seeking indemnification pursuant to Section 9.1(a)(i), 9.1(a)(iii) or 9.2(i) for any breach of, or inaccuracy in, any representation, warranty or statement unless a claim is made by written notice provided to the Indemnifying Party:

(i) at any time, in the case of any breach of, or inaccuracy in, the representations and warranties set forth in Sections 3.1 (Organization) (first two sentences only), 3.2(a) (Power and Authorization), 3.4 (Noncontravention), 3.5 (Capitalization), 3.8 (Debt), 3.23 (No Brokers), 4.1 (Organization), 4.2 (Power and Authorization), 4.4(b) (Noncontravention of Governmental Order, Material Contractual Obligations or Organizational Documents of Sellers), 4.5 (Title), 4.6 (No Brokers), 5.1 (Organization), 5.2 (Power and Authorization), 5.4(b) (Noncontravention of Governmental Order, material Contractual Obligations or Organizational Documents of Buyer), or 5.5 (No Brokers);

(ii) at any time prior to the thirtieth (30) day following the expiration of the applicable statute of limitations (taking into account any tolling periods and other extensions) in the case of any breach of, or inaccuracy in, the representations and warranties set forth in Section 3.13 (Tax Matters);

(iii) at any time prior to the fourth anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, the representations and warranties set forth in Section 3.11 (Intellectual Property) and at any time prior to the third anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, the representations and warranties set forth in Section 3.12 (Legal Compliance); and

(iv) at any time prior to August 31, 2012, the case of any breach of, or inaccuracy in, any other representation, warranty or statement in this Agreement.

Claims for indemnification pursuant to any other provision of Sections 9.1(a) and 9.2(a) are not subject to the limitations set forth in this Section 9.3.

(b) Written Notice of Indemnification Claims. In the event that any Indemnified Person wishes to make a claim for indemnification under this Article IX, the Indemnified Person shall give written notice of such claim to each Indemnifying Party (with all notices to the Sellers being given to the Sellers' Representative) within the applicable time limitations contained in Section 9.3(a). Any such notice shall describe such claim and the material facts and circumstances upon which such claim is based, in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided, that no defect in the information contained in such notice from the Indemnified Person to any Indemnifying Party will relieve such Indemnifying Party from any obligation under this Article IX, except to the extent such failure to include information actually and materially prejudices such Indemnifying Party. In connection with such claim, the Indemnified Person shall cooperate fully with the reasonable

requests of the Indemnifying Party and make available to the Indemnifying Party all pertinent information and personnel under its control reasonably requested by the Indemnifying Party.

Section 9.4. Third Party Claims.

(a) Notice of Third Party Claims. Promptly after receipt by an Indemnified Person of written notice of the assertion of a claim by any Person who is not a party to this Agreement (a "Third Party Claim") that may give rise to an Indemnity Claim against an Indemnifying Party under this Article IX, the Indemnified Person shall give written notice thereof to the Indemnifying Party, which shall include a copy of all papers served with respect to such Third Party Claim, if any; provided, that no delay on the part of the Indemnified Person in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article IX, except to the extent such delay prejudices the Indemnifying Party or such notice is not provided as required in Section 9.3.

(b) Assumption of Defense, etc. The Indemnifying Party will be entitled to assume the entire control of the defense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Person pursuant to Section 9.4(a), including, at its own expense, employment of counsel of its choice reasonably satisfactory to the Indemnified Person, and in connection therewith, the Indemnified Person shall cooperate fully with the reasonable requests of the Indemnifying Party and make available to the Indemnifying Party all pertinent information and personnel under its control reasonably requested by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not have the right to assume or continue to control the defense of any Third Party Claim in any of the following circumstances:

(i) the Indemnifying Party(ies) does not give written notice that they or it will defend the Third Party Claim to the Indemnified Person within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim under Section 9.4(a);

(ii) the Indemnifying Party does not give written notice, within ninety (90) days after the Indemnified Person has given notice of the Third Party Claim under Section 9.4(a), stating that the Indemnifying Party will, and thereby covenants to, indemnify, defend and hold harmless the Indemnified Person from and against the entirety of any and all Losses the Indemnified Person may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim (subject to any applicable threshold amount, deductible amount and cap on liability referred to in Section 9.1 or Section 9.2);

(iii) the Indemnifying Party does not provide the Indemnified Person with reasonable evidence that the Indemnifying Party will have adequate financial resources to defend against the Third Party Claim and fulfill its potential indemnification obligations hereunder;

(iv) the Third Party Claim involves non-monetary claims for relief or seeks an injunction or other equitable relief against the Indemnified Person;

(v) the Indemnified Person has been advised by counsel that a material actual or potential conflict exists between the Indemnified Person and the Indemnifying Party in connection with the defense of the Third Party Claim;

(vi) the Third Party Claim relates to or otherwise arises in connection with any criminal or regulatory enforcement Action, other than a regulatory Action that by its terms is limited solely to the pursuit of monetary relief and could not result in any disbarment, loss of qualification, change in business operations or other non-monetary impact on the business of the Buyer or the Company; or

(vii) the Indemnifying Party does not conduct the defense of the Third Party Claim diligently.

The Indemnified Person may retain separate co-counsel at its sole cost and expense and participate reasonably (but not control) in the defense of the Third Party Claim.

(c) Limitations on Indemnifying Party Control. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, conditioned or delayed, unless, subject to the other terms hereof, such judgment, compromise or settlement (i) provides for the payment of money as sole relief for the claimant, (ii) results in the full and general release of all Indemnified Persons from all liabilities arising or relating to, or in connection with, the Third Party Claim and (iii) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and no effect on any other claims that may be made against the Indemnified Person.

(d) Indemnified Person's Control. If the Indemnifying Party does not assume control or is otherwise not entitled to assume control or loses the right to continue to control the defense of any Third Party Claim as contemplated by Section 9.4(b), the Indemnified Person may defend the Third Party Claim in any reasonable manner; provided, however, the Indemnified Person shall not consent to the entry of any judgment and shall not enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed. In the event that the Indemnified Person conducts the defense of the Third Party Claim pursuant to this Section 9.4(d):

(i) the Indemnifying Party may retain separate co-counsel at its sole cost and expense and participate reasonably (but not control) in the defense of the Third Party Claim;

(ii) to the extent provided in the Escrow Agreement, the Indemnifying Party will advance the Indemnified Person promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses); and

(iii) the Indemnifying Party will remain responsible for any and all other Losses that the Indemnified Person may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the extent provided in this Article IX.

Section 9.5. Consent to Jurisdiction Regarding Third Party Claim. The Buyer, each of the Sellers and the Sellers' Representative, each hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim may be brought against any Indemnified Person for purposes of any claim in the nature of impleader or similar actions which such Indemnified Person may have against any such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim and where the Indemnified Party would be materially prejudiced if it did not bring the Sellers or Sellers' Representative into such proceeding, and in furtherance thereof, the provisions of Section 11.9 are incorporated herein by reference, mutatis mutandis.

Section 9.6. No Circular Recovery. Each Seller hereby agrees that it will not make any claim for indemnification against the Buyer or the Company, under Section 6.8 of this Agreement or otherwise, by reason of the fact that such Seller was a controlling person, director, employee or Representative of the Company or was serving as such for another Person at the request of the Company (whether such claim is for Losses of any kind or otherwise and whether such claim is pursuant to any Legal Requirement, Organizational Document, Contractual Obligation or otherwise) with respect to any claim brought by a Buyer Indemnified Person against any Seller under this Agreement. With respect to any claim brought by a Buyer Indemnified Person against any Seller under this Agreement, each Seller expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any amounts owed by such Seller pursuant to this Article IX.

Section 9.7. Other Limitations and Provisions. In addition to the other limitations on indemnification set forth herein:

(a) No Indemnifying Party shall have any indemnification obligation for punitive, exemplary or special damages except to the extent amounts in respect of any such type of damages are paid or payable to a third party in respect of a claim by it.

(b) In no event shall any Seller have any obligation to make indemnification payments in excess of the cash proceeds actually received by such Seller pursuant to Article II, the Escrow Agreement or Article X.

(c) Except to the extent of the Escrowed Amount on account of breaches by the Company, in no event shall any Seller be responsible or liable for any obligation of any other Seller.

(d) The parties hereto acknowledge that nothing in this Agreement is intended to create any contractual duty to mitigate Losses or is intended to limit any party's obligation to mitigate Losses under applicable law.

(e) Notwithstanding anything contained in this Agreement to the contrary, the amount of any indemnification payment pursuant to this Agreement shall be (a) reduced by the amount of any Tax benefit (as defined below) actually realized by the Indemnified Person, and (b) increased to take into account any net tax cost actually incurred by the Indemnified Person as a result of the accrual or receipt of any such indemnity payment (grossed up for such increase). Any indemnification payment under this Article IX or Article X shall initially be made without



regard to this Section 9.7(e) and shall be increased or reduced to reflect any such net Tax cost (including gross-up) or net Tax benefit only after the Indemnified Person has actually realized such cost or benefit. For purposes of this Agreement (other than Section 10.8), an Indemnified Person shall be deemed to have “actually realized” a net Tax cost or a net Tax benefit to the extent that, and at such time as, the amount of Taxes payable by such Indemnified Person is increased above or reduced below, as the case may be, the amount of Taxes that such Indemnified Person would be required to pay but for the receipt of the indemnity payment or the incurrence or payment of such Loss or Taxes, as the case may be. The amount of any increase or reduction hereunder shall be adjusted to reflect any final determination with respect to the Indemnified Person’s liability for Taxes, and payments between the parties to this Agreement to reflect such adjustment shall be made if necessary. The determination of whether there has been a Tax cost or Tax benefit shall be made solely at the Indemnified Person’s good faith discretion. For purposes of this Section 9.7(e), the Indemnified Person shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnification payment hereunder or the incurrence or payment of any indemnified Loss. Nothing in this Section 9.7(e) will require any party to alter its tax position or otherwise give up any right related to taxes in order to claim a Tax benefit for purposes of this Section 9.7(e).

(f) Notwithstanding anything contained in this Agreement to the contrary, but subject to the next sentence, no party shall be entitled to recover an amount pursuant to this Article IX, to the extent that such party or any of its Affiliates has already recovered such amount (calculated net of the costs incurred to collect such amount) from an insurance company. Nothing in this Section 9.7(f) or otherwise in this Agreement is intended to require any party to pursue claims against any insurer or to waive or modify the subrogation or similar rights of any insurer of any Person.

Section 9.8. Knowledge and Investigation. The right of any Buyer Indemnified Person or Seller Indemnified Person to indemnification pursuant to this Article IX will not be affected by any investigation conducted or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement, referred to in Sections 9.1 and 9.2. The waiver of any condition contained in this Agreement or in any Ancillary Agreement based on the breach of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right of any Buyer Indemnified Person or Seller Indemnified Person to indemnification pursuant to this Article IX based on such representation, warranty, covenant or agreement.

Section 9.9. Escrowed Amount. In addition to the other limitations on indemnification set forth herein, the Buyer shall first seek a remedy from the Escrowed Amount pursuant to the Escrow Agreement with respect to any indemnification claim asserted hereunder before seeking to recover any Losses directly from any Sellers. On August 31, 2012 (the “Release Date”), as provided in the Escrow Agreement certain amounts held in escrow will be released to the Sellers and Phantom Plan Participants, and thereafter any remaining amounts will be distributed to Buyer Indemnified Persons, the Sellers or Phantom Plan Participants as provided in the Escrow Agreement. As set forth in more detail in the Escrow Agreement, the

Escrow Agent shall distribute to each Seller its Combined Percentage thereof, in each case less any amount that has previously been paid to the Buyer from the Escrow Amount on account of indemnity claims against such Seller pursuant to Section 9.1(a)(iii) or (iv), and as provided in the Phantom Plan Payment Agreement will remit to each Phantom Plan Participant its Combined Percentage thereof. As set forth in more detail in the Escrow Agreement, promptly as practicable following the resolution of each pending indemnification claim which was outstanding as of the Release Date (other than claims solely against one Seller arising under Section 9.1(a)(iii) or (iv), in which case after the resolution of the pending indemnification claim any related portion of the Escrowed Amount that is not released to the Buyer will be released solely to the applicable Seller), the Escrow Agent shall distribute to each Seller and each Phantom Plan Participant its Combined Percentage of the excess, if any, of (a) the amount so withheld with respect to such pending indemnification claim as of the Release Date, over (b) the amount used to satisfy the indemnification obligation of the Sellers pursuant to this Article IX and Phantom Plan Participant pursuant to the Phantom Plan Payment Agreement with respect to such pending indemnification claim.

Section 9.10. Remedies Cumulative. The rights of each Buyer Indemnified Person and Seller Indemnified Person under this Article IX are cumulative, and each Buyer Indemnified Person and Seller Indemnified Person will have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article IX without regard to the availability of a remedy under any other provision of this Article IX.

Section 9.11. Remedies Exclusive. The remedies provided in this Article IX and Article X shall be the exclusive remedies of the parties hereto after the closing for monetary damages in connection with the transactions contemplated by this Agreement (other than for actual fraud), including any breach or non-performance of any representation, warranty, covenant or agreement contained herein and except that any party to any Ancillary Agreement may bring any action it chooses, outside of this Article IX, for any claim under that Ancillary Agreement. No party may commence any suit, action or proceeding against any other party hereto or any of their respective Affiliates (or any other Person) with respect to the subject matter of this Agreement, whether in contract, tort or otherwise, except to enforce such party's express rights under this Article IX and Article X and any claim for specific performance pursuant to Sections 6.2, 6.4 or 11.10 and except that any party to any Ancillary Agreement may bring any action it chooses, outside of this Article IX, for any claim under that Ancillary Agreement. The provisions of Article IX were specifically bargained for and reflected in the amounts payable to the Sellers in connection with the transactions contemplated hereby.

## ARTICLE X

### TAX MATTERS

Section 10.1. Tax Indemnification. From and after the Closing Date, each Seller shall severally, and not jointly, in accordance with their respective Applicable Indemnity Percentages indemnify and hold harmless each Buyer Indemnified Person from, against and in respect of any and all Losses that constitute or that result from, arise out of or relate to, directly or indirectly (a) Taxes (or the non-payment thereof) of the Company for all Taxable periods ending on or before the Closing Date and the portion through the Closing Date for any Taxable

period that includes (but does not end on) the Closing Date (“Pre-Closing Tax Period”), (b) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar Legal Requirement, (c) any and all Taxes of any Person imposed on the Company as a transferee or successor, pursuant to a Contractual Obligation entered into at any time at or prior to the Closing, or otherwise and (d) any and all Taxes related to the Service Business Transfer and issuance of Equity Interests in the New Services Entity and distribution of these Equity Interests to the Sellers, in each case unless such Taxes were taken into account in determining Net Working Capital pursuant to Section 2.6.

Section 10.2. Straddle Period. In the case of any Taxable period that includes (but does not end on) the Closing Date (a “Straddle Period”), the amount of any Taxes of the Company based upon or measured by net income or gain for the Pre-Closing Tax Period will be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the Taxable period of any partnership or other pass-through entity in which the Company holds a beneficial interest will be deemed to terminate at such time). The amount of Taxes other than Taxes of the Company based upon or measured by net income or gain for a Straddle Period which relate to the Pre-Closing Tax Period will be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction, the numerator of which is the number of days in the Taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

Section 10.3. Tax Sharing Agreements. All Tax sharing agreements or similar Contractual Obligations and all powers of attorney with respect to or involving the Company will be terminated prior to the Closing and, after the Closing, the Company will not be bound thereby or have any Liability thereunder.

Section 10.4. Certain Taxes and Fees. All transfer, documentary, sales, use, stamp, registration and other similar Taxes, and any conveyance fees or recording charges incurred in connection with the Contemplated Transactions, will be paid by the Sellers when due out of the funds held in the escrow account maintained pursuant to the Escrow Agreement. The Sellers’ Representative will, at the expense of the Sellers, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges and, if required by applicable Legal Requirements, the Buyer will (and will cause its Affiliates to) join in the execution of any such Tax Returns and other documentation.

Section 10.5. Cooperation on Tax Matters. The Buyer, the Company, the Sellers’ Representatives and the Sellers will cooperate fully, as and to the extent reasonably requested by any of the Buyer, the Company or the Sellers’ Representatives, in connection with any Tax matters relating to the Company (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other parties.

Section 10.6. Control. The Company shall promptly notify the Sellers’ Representative in writing upon receipt by the Company of a written notice of any pending or threatened Tax audits or assessments with respect to Taxes for any Pre-Closing Tax Periods

("Tax Contest Claims"); provided, however, no failure or delay by the Company to provide notice of a Tax Contest Claim shall reduce or otherwise affect the obligation of the Sellers hereunder except to the extent the defense of such Tax Contest Claim is prejudiced thereby. The Sellers' Representative shall have the right to control the conduct of any issues in any such Tax Contest Claim; provided, that (i) the Sellers' Representative shall have confirmed in writing that the Sellers are obligated hereunder to indemnify Buyer with respect to such Tax Contest Claim, (ii) the Sellers' Representative shall keep the Company informed regarding the progress and substantive aspects of any such Tax Contest Claim, including providing the Company with all written materials relating to such Tax proceeding received from the relevant taxing authority and all written materials submitted to such taxing authority by the Sellers' Representative, (iii) the Company shall be entitled to participate in any such Tax Contest Claim, including having an opportunity to comment on any written materials prepared in connection with any such Tax Contest Claim and attending any conferences relating to any such Tax Contest Claim and (iv) the Sellers' Representative shall not compromise or settle any such Tax Contest Claim without obtaining the Company's prior written consent, which consent shall not be unreasonably withheld or delayed. The Company shall control the conduct of any issues in any Tax Contest Claim in respect of Taxes for Straddle Periods; provided, that (i) the Company shall keep the Sellers' Representative informed regarding the progress and substantive aspects of any such Tax Contest Claim, including providing the Sellers' Representative with all written materials relating to such Tax proceeding received from the relevant taxing authority and all written materials submitted to such taxing authority by Buyer or the Company, (ii) the Sellers' Representative shall be entitled to participate in any such Tax Contest Claim, including having an opportunity to comment on any written materials prepared in connection with any such Tax Contest Claim and to attend any conferences relating to any such Tax Contest Claim and (iii) the Company and the Buyer (to the extent it has any authority to compromise or settle Tax Contest Claims) shall not compromise or settle any such Tax Contest Claim without obtaining the Sellers' Representative's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event of any conflict between the provisions of this Section 10.6 and any other Section of this Agreement, this Section 10.6 shall control.

Section 10.7. Purchase Price Adjustment. The parties agree that any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by applicable law.

Section 10.8. Tax Benefits Attributable to Seller Transaction Expenses, Option Exercises, Phantom Equity Plan Payouts and Share Transfers. In the event that any Seller Transaction Expenses, Option exercises or Phantom Equity Plan Payouts are properly reportable in compliance with all applicable Legal Requirements as deductions by the Company or any of its Affiliates (on the Company's consolidated federal income Tax Return, on any other consolidated, combined or unitary Tax Return of the Company under state, local or foreign Tax law, or otherwise) in a Post-Closing Tax Period, then the Buyer shall pay to the Sellers an amount of cash equal to the amount of any related Tax Benefits within 7 Business Days following the date of filing of the Tax Return on which such Tax Benefits are reported by the Company or any of its Affiliates. For purposes of this Section 10.8, "Tax Benefits" means the excess of (a) the hypothetical aggregate Tax liability that would have been reported on the applicable Tax Return of the Company and its Affiliates for a Post-Closing Tax Period determined without regard to the payment of any of the applicable Seller Transaction Expenses,

the exercise of any Options or any Phantom Equity Plan Payouts over (b) the actual aggregate Tax liability of the Company and its Affiliates reported on the applicable Tax Return for such Post-Closing Tax Period. The Buyer shall be entitled to use all other available deductions before using any Seller Transaction Expenses, Option exercises or Phantom Equity Plan Payouts to reduce taxable income in such Post-Closing Tax Period. The determination of any Tax Benefits shall be made by the Buyer in good faith consistent with the three preceding sentences, and, upon written request by the Sellers' Representative, the Buyer shall provide to the Sellers' Representative a calculation supporting the Buyer's determination of such Tax Benefits; provided, however, that this Section 10.8 shall not be construed to require Buyer or any of its Affiliates to make available its Tax Returns (or any other information relating to Taxes that is deemed confidential) to any Seller, the Sellers' Representative or any other Person. To the extent allowed by all applicable Legal Requirements, the transfer of shares of the Company's capital stock by Lamberto Raffaelli as described below on or prior to the Closing Date shall be treated for Tax purposes and for all purposes of this Section 10.8 as a contribution of such shares by Lamberto Raffaelli to the capital of the Company immediately followed by a transfer of such shares by the Company to such employee as compensation arising in a Pre-Closing Tax Period in accordance with Treasury Regulations section 1.83-6(d). Lamberto Raffaelli hereby confirms that prior to the execution and delivery of this Agreement he transferred shares in compliance with the Stockholders Agreement as follows: 15,000 to Frederick Schindler, 15,000 to Michael Groden and 10,000 to Philip Beucler, and that he has not at any time after September 30, 2010 made any other transfer of Shares.

Section 10.9. Refunds. The amount of any refunds of Taxes of the Company for any Pre-Closing Tax Period shall be for the account of Sellers. Notwithstanding the foregoing, any such refunds of Taxes shall be for the account of Buyer to the extent such refunds of Taxes are attributable (determined on a marginal basis) to the carryback from a Post-Closing Tax Period, of items of loss, deduction or credit, or other Tax items, of the Company (or any of its Affiliates, including Buyer) other than any Seller Transaction Expenses, Option exercises and Phantom Equity Plan Payouts subject to Section 10.8. The amount of any other refunds of Taxes of the Company shall be for the account of the Buyer. Each party shall forward, and shall cause its Affiliates to forward, to the party entitled to receive the amount of a refund to Tax the amount of such refund, within ten (10) days after such refund is received. The Buyer and its Affiliates shall, if the Sellers' Representative so requests, cause the Company to file for and use its commercially reasonable efforts to obtain any such Tax refund for a Pre-Closing Tax Period. Any refund of Tax payable to Sellers pursuant to this Section 10.9 shall first be reduced by any unpaid indemnifiable amounts that Sellers owe under Section 10.1 relating to Taxes payable with respect to the Services Business Transfer and all related distributions of the Equity Interests of the New Services Entity.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1. Notices. Any notice, request, demand, claim or other communication required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered personally, delivered by nationally recognized overnight courier service, sent by certified or registered mail, postage prepaid, or (if a

facsimile number is provided below) sent by facsimile (subject to electronic confirmation of good facsimile transmission). Any such notice, request, demand, claim or other communication shall be deemed to have been delivered and given (a) when delivered, if delivered personally, (b) the Business Day after it is deposited with such nationally recognized overnight courier service, if sent for overnight delivery by a nationally recognized overnight courier service, (c) the day of sending, if sent by facsimile prior to 5:00 p.m. (Eastern time) on any Business Day or the next succeeding Business Day if sent by facsimile after 5:00 p.m. (Eastern time) on any Business Day or on any day other than a Business Day or (d) five Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or, if applicable, facsimile number, or to such other address or addresses or facsimile number or numbers as such party may subsequently designate to the other parties by notice given hereunder:

If to the Company (prior to the Closing), to:

8B Industrial Way  
Salem, NH 03079  
Telephone number: (603) 898-6800  
Facsimile number: (603) 898-6860  
Attention: Lamberto Raffaelli

with a copy (which shall not constitute notice) to:

Choate, Hall & Stewart LLP  
Two International Place  
Boston, MA 02110  
Telephone number: 617-248-5148  
Facsimile number: 617-248-4000  
Attention: Robert V. Jahrling

If to the Buyer (or to the Company after the Closing), to:

201 Riverneck Road  
Chelmsford, MA 01824  
Telephone number: (978) 967-1788  
Facsimile number: (978) 256-0013  
Attention: Gerald M. Haines II

with a copy (which shall not constitute notice) to:

Bingham McCutchen LLP  
One Federal Street  
Boston, MA 02110-1726  
Telephone number: (617) 951-8852  
Facsimile number: (617) 428-6419  
Attention: John R. Utzschneider

If to any of the Sellers, to such Seller in care of the Sellers' Representative, and if to the Sellers' Representative, to:

8B Industrial Way  
Salem, NH 03079  
Telephone number: (603) 898-6800  
Facsimile number: (603) 898-6860  
Attention: Lamberto Raffaelli

with a copy (which shall not constitute notice) to:

Choate, Hall & Stewart LLP  
Two International Place  
Boston, MA 02110  
Telephone number: 617-248-5148  
Facsimile number: 617-248-4000  
Attention: Robert V. Jahrling

Each of the parties to this Agreement may specify a different address or addresses or facsimile number or facsimile numbers by giving notice in accordance with this Section 11.1 to each of the other parties hereto.

Section 11.2. Succession and Assignment; No Third-Party Beneficiaries. Subject to the immediately following sentence, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, each of which such successors and permitted assigns will be deemed to be a party hereto for all purposes hereof. No party may assign, delegate or otherwise transfer either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other parties (with the Sellers' Representative acting for all of the Sellers), and any attempt to do so will be null and void *ab initio*; provided, that (a) the Buyer may assign this Agreement and any or all of its rights and interests hereunder to one or more of its Affiliates or designate one or more of its Affiliates to perform its obligations hereunder, in each case, so long as the Buyer is not relieved of any liability or obligations hereunder, (b) the Buyer may assign this Agreement and any or all of its rights and interest hereunder to any purchaser of all or substantially all its assets or designate such purchaser to perform its obligations hereunder, subject to Section 2.7(h), (c) the Buyer may assign certain obligations as provided in Section 2.7(h) and (d) any of the Buyer Indemnified Persons may collaterally assign any or all of its rights and obligations hereunder to any provider of debt financing to it or any of its Affiliates. Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto and their successors and permitted assignees and nothing herein expressed or implied will give or be construed to give any Person, other than the parties hereto and such successors and permitted assignees, any other right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed by the parties hereto that an Indemnified Person that is not party hereto is intended to be an express third party beneficiary of Article IX of this Agreement.

Section 11.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement will be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer, the Company and the Sellers' Representative (acting for all of the Sellers), or in the case of a waiver, by the party (or in the case of any or all of the Sellers, by the Sellers' Representative) against whom the waiver is to be effective. No waiver by any party of any breach or violation of, default under or inaccuracy in any representation, warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach or violation of, default under, or inaccuracy in, any such representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any party in exercising any right, power or remedy under this Agreement will operate as a waiver thereof.

Section 11.4. Provisions Concerning the Sellers' Representative.

(a) Appointment. Each Seller hereby irrevocably appoints Lamberto Raffaelli as the sole and exclusive agent, proxy and attorney-in-fact for such Seller for all purposes of this Agreement and the Contemplated Transactions, with full and exclusive power and authority to act on such Seller's behalf (the "Sellers' Representative"). The appointment of the Sellers' Representative hereunder is coupled with an interest, shall be irrevocable and shall not be affected by the death, incapacity, insolvency, bankruptcy, illness or other inability to act of any Seller. Without limiting the generality of the foregoing, the Sellers' Representative is hereby authorized, on behalf of the Sellers, to:

(i) in connection with the Closing, execute and receive all documents, instruments, certificates, statements and agreements on behalf of and in the name of each Seller necessary to effectuate the Closing and consummate the Contemplated Transactions;

(ii) receive and give all notices and service of process, make all filings, enter into all Contractual Obligations, make all decisions, bring, prosecute, defend, settle, compromise or otherwise resolve all claims, disputes and Actions, authorize payments in respect of any such claims, disputes or Actions, and take all other actions, in each case, with respect to the matters set forth in Section 2.6, Section 2.7, Article IX or Article X or any other Actions directly or indirectly arising out of or relating to this Agreement or the Contemplated Transactions;

(iii) receive and give all notices, make all decisions and take all other actions on behalf of the Sellers in connection with the Escrowed Amount and the escrowed funds, including giving any instructions or authorizations to the Buyer or the Escrow Agent to pay from such escrowed funds any amounts owed by the Sellers pursuant to this Agreement or otherwise in connection with the Contemplated Transactions;

(iv) execute and deliver, should it elect to do so in its good faith discretion, on behalf of the Sellers, any amendment to, or waiver of, any term or provision of this Agreement, or any consent, acknowledgment or release relating to this Agreement; and



(v) take all other actions permitted or required to be taken by or on behalf of the Sellers under this Agreement and exercise any and all rights that the Sellers or the Sellers' Representative are permitted or required to do or exercise under this Agreement.

(b) Liability. The Sellers' Representative shall not be held liable by any of the Sellers for actions or omissions in exercising or failing to exercise all or any of the power and authority of the Sellers' Representative pursuant to this Agreement, except in the case of the Sellers' Representative's gross negligence, bad faith or willful misconduct. The Sellers' Representative shall be entitled to rely on the advice of counsel, public accountants or other independent experts that it reasonably determines to be experienced in the matter at issue, and will not be liable to any Seller for any action taken or omitted to be taken in good faith based on such advice. The Sellers will jointly and severally indemnify the Sellers' Representative from any Losses arising out of its serving as the Sellers' Representative hereunder, except for Losses arising out of or caused by the Sellers' Representative's gross negligence, bad faith or willful misconduct. The Sellers' Representative is serving in its capacity as such solely for purposes of administrative convenience, and is not personally liable in such capacity for any of the obligations of the Sellers hereunder, and the Buyer agrees that it will not look to the personal assets of the Sellers' Representative, acting in such capacity, for the satisfaction of any obligations to be performed by the Sellers hereunder.

(c) Reliance on Appointment; Successor Sellers' Representative. The Buyer and the other Buyer Indemnified Persons may rely on the appointment and authority of the Sellers' Representative granted pursuant to this Section 11.4 until receipt of written notice of the appointment of a successor Sellers' Representative made in accordance with this Section 11.4. In so doing, the Buyer and the other Buyer Indemnified Persons may rely on any and all actions taken by and decisions of the Sellers' Representative under this Agreement notwithstanding any dispute or disagreement among any of the Sellers or the Sellers' Representative with respect to any such action or decision without any Liability to, or obligation to inquire of, any Seller, the Sellers' Representative or any other Person. Any decision, act, consent or instruction of the Sellers' Representative shall constitute a decision of all the Sellers and shall be final and binding upon each of the Sellers. At any time after the Closing, with or without cause, by a written instrument that is signed in writing by holders of at least a majority-in-interest of the Sellers (determined by reference to their respective Combined Percentages) and delivered to Buyer, the Sellers may remove and designate a successor Sellers' Representative.

#### Section 11.5. Entire Agreement.

(a) This Agreement, together with the other Ancillary Agreements and any documents, instruments and certificates expressly referred to herein, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings and agreements, whether written or oral, with respect thereto. There are no restrictions, promises, warranties, representations, covenants, or undertakings, other than those expressly provided for herein and therein.

(b) Each party hereto acknowledges that no party has made, and none of its Affiliates or Representatives has made, nor has any party relied on, any representation, warranty, covenant

or agreement, express or implied, with respect to the Company, its business or the Contemplated Transactions, other than those representations, warranties, covenants and agreement explicitly set forth in this Agreement or the Ancillary Agreements.

Section 11.6. Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed and delivered by each party hereto. Counterpart signature pages to this Agreement may be delivered by facsimile or electronic delivery (*i.e.*, by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

Section 11.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each party hereto intends that such provision will be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements.

Section 11.8. Governing Law. This Agreement, the rights of the parties hereunder and all Actions arising in whole or in part under or in connection herewith, will be governed by and construed and enforced in accordance with the domestic substantive laws of The Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

Section 11.9. Jurisdiction; Venue; Service of Process.

(a) Jurisdiction. Subject to the provisions of Sections 2.6, 2.7 and 9.5, each of the parties to this Agreement, by its execution hereof, (i) hereby irrevocably submits to the exclusive jurisdiction of the United States District Court located in The Commonwealth of Massachusetts, or if such Action may not be brought in federal court, the state courts of The Commonwealth of Massachusetts located in the City of Boston for the purpose of any Action among any of the parties relating to or arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement or the Contemplated Transactions, (ii) hereby waives to the extent not prohibited by applicable Legal Requirements, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such Action brought in one of the above-named courts should be dismissed on grounds of *forum non conveniens*, should be transferred or removed to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other Action in any other court other than one of the above-named courts or that this Agreement, any Ancillary Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees not to commence any such Action other than before one of the above-named courts. Notwithstanding the previous sentence a party may commence any Action

in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

(b) Venue. Subject to the provisions of Sections 2.6, 2.7 and 9.5, each of the parties to this Agreement agrees that for any Action among any of the parties relating to or arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement or the Contemplated Transactions, such party shall bring such Action only in the City of Boston. Notwithstanding the previous sentence a party may commence any Action in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts. Each party hereto further waives any claim and will not assert that venue should properly lie in any other location within the selected jurisdiction.

(c) Service of Process. Each of the parties to this Agreement hereby (i) consents to service of process in any Action among any of the parties hereto relating to or arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement or the Contemplated Transactions in any manner permitted by Massachusetts law, (ii) agrees that service of process made in accordance with clause (i) or made by registered or certified mail, return receipt requested, at its address specified pursuant to Section 9.1, will constitute good and valid service of process in any such Action and (iii) waives and agrees not to assert (by way of motion, as a defense, or otherwise) in any such Action any claim that service of process made in accordance with clause (i) or (ii) does not constitute good and valid service of process.

(d) Agents. Each of ELT and Costanzo Perlini, to the fullest extent permitted by applicable law, irrevocably and fully waives the defense of an inconvenient forum to the maintenance of any Action as provided in this Section 11.9 and has designated and appointed CT Corporation System, whose address is 155 Federal Street, Suite 700, Boston, MA 02210 (the "Registered Agent"), as its Registered Agent upon whom process may be served in any such Action. Each of ELT and Costanzo Perlini represents that it has notified the Registered Agent of such designation and appointment and that the Registered Agent has accepted the same in writing. Each of ELT and Costanzo Perlini has authorized and directed the Registered Agent to accept such service. Each of ELT and Costanzo Perlini further agrees that service of process upon its Registered Agent and written notice of said service to ELT and Costanzo Perlini, as the case may be, mailed by first class mail or delivered to its Registered Agent shall be deemed in every respect effective service of process upon ELT and Costanzo Perlini, as the case may be, in any such suit or proceeding.

Section 11.10. Specific Performance. Each of the parties acknowledges and agrees that the other parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting a bond or other undertaking, the other parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any Action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled, at law or in equity. Each party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at law would be adequate.

Section 11.11. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, THE PARTIES HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION WHATSOEVER BETWEEN OR AMONG THEM RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS AND THAT SUCH ACTIONS WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, each of the undersigned has executed this Stock Purchase Agreement as of the date first above written.

THE BUYER:

MERCURY COMPUTER SYSTEMS, INC.

By: /s/ Mark Aslett

Name: Mark Aslett

Title: President and Chief Executive Officer

THE COMPANY:

LNx CORPORATION

By: /s/ Lamberto Raffaelli

Name: Lamberto Raffaelli

Title: President and Chief Executive Officer

SELLERS' REPRESENTATIVE:

/s/ Lamberto Raffaelli

Lamberto Raffaelli

THE SELLERS:

/s/ Lamberto Raffaelli

Lamberto Raffaelli

ELETTRONICA S.p.A.

By: /s/ Roberto Turco

Name: Roberto Turco

Title: Deputy General Manager & CFO

/s/ David Pozar

David Pozar

/s/ Frederick Schindler

Frederick Schindler

/s/ Michelle Schindler

Michelle Schindler

/s/ Costanzo Perlini

Costanzo Perlini

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/s/ Michael Groden

Michael Groden

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/s/ Anthony Borghetti

Anthony Borghetti

---

/s/ Jan Conant

Jan Conant

---

/s/ Thomas Baird

Thomas Baird

---

/s/ Suzanne Belanger

Suzanne Belanger

---

/s/ Michael Hanides

Michael Hanides

---

/s/ Lawrence Laplante

Lawrence Laplante

---

/s/ Allen Leno

Allen Leno

---

/s/ Richard Levesque

Richard Levesque

---

/s/ Philip Beucler

Philip Beucler

**MERCURY COMPUTER SYSTEMS, INC.****Compensation Policy for Non-Employee Directors**Objective

It is the objective of Mercury to compensate non-employee directors in a manner which will enable recruitment and retention of highly qualified directors and fairly compensate them for their services as a director.

Philosophy

Board of Director compensation includes cash and equity. It is annually reviewed by the Compensation Committee with recommendations to the Board. This review includes:

- a market survey of Board compensation to peer companies at the 50<sup>th</sup> and 75<sup>th</sup> percentiles;
- a review of Board and Committee meeting frequency;
- Board member personal preparation time for Board and Committee meetings; and
- Board member responsibilities.

The Board targets its annual cash and equity compensation to the 75<sup>th</sup> percentile of the market.

Cash Compensation

|   |                                    |
|---|------------------------------------|
| Annual retainer for non-employee directors: | \$55,000 per annum, paid quarterly |
| Additional annual retainers:                |                                    |
| Independent Chairman:                       | \$45,000 per annum, paid quarterly |
| Chairman of the Audit Committee:            | \$19,000 per annum, paid quarterly |
| Chairman of the Compensation Committee:     | \$15,000 per annum, paid quarterly |
| Chairman of the N&G Committee:              | \$10,500 per annum, paid quarterly |

Directors are entitled to be reimbursed for their reasonable expenses incurred in connection with attendance at Board and committee meetings.

Quarterly retainer payments shall be paid in arrears within 30 days following the end of each quarter. The full quarterly retainer shall be paid to each director who served on the Board during all or a portion of a quarter.

Equity Compensation

New non-employee directors will be granted equity awards in connection with their first election to the Board. These awards will be granted by the Board of Directors and will consist of shares of restricted stock with a grant date fair value equal to three times the annual retainer for non-employee directors. These awards will vest as to 50% of the covered shares on each of the first two anniversaries of the date of grant.

Non-employee directors may also receive annual equity awards (“Annual Equity Awards”) at the discretion of the Board of Directors. Non-employee directors will receive Annual Equity Awards consisting of the following components:

1. Stock options to purchase 8,000 shares of common stock. These awards will vest as to 50% of the covered shares on the date of grant and as to the remaining covered shares on the first anniversary of the date of grant, and will expire on the seventh anniversary of the date of grant; and
2. Restricted stock awards for 5,333 shares of common stock. These awards will vest as to 50% of the covered shares on the date of grant and as to the remaining covered shares on the first anniversary of the date of grant.

Non-employee directors will not be eligible to receive an Annual Equity Award for the fiscal year in which they are first elected. Non-employee directors who are first elected to the Board during the first half of Company's fiscal year will be eligible to receive an Annual Equity Award for the next fiscal year; otherwise, non-employee directors will not be eligible to receive their first Annual Equity Award until the second fiscal year following the fiscal year in which they are first elected to the Board.

Approved by the Board of Directors, as amended, on January 19, 2011.



## CERTIFICATION

I, Mark Aslett, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercury Computer Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2011

/s/ MARK ASLETT

Mark Aslett

PRESIDENT AND CHIEF EXECUTIVE OFFICER  
[PRINCIPAL EXECUTIVE OFFICER]

## CERTIFICATION

I, Robert E. Hult, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercury Computer Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2011

/s/ ROBERT E. HULT

Robert E. Hult

SENIOR VICE PRESIDENT,  
CHIEF FINANCIAL OFFICER AND TREASURER  
[PRINCIPAL FINANCIAL OFFICER]

Mercury Computer Systems, Inc.

Certification Pursuant To  
18 U.S.C. Section 1350,  
As Adopted Pursuant To  
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Mercury Computer Systems, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2011 as filed with the Securities and Exchange Commission (the "Report"), each of, Mark Aslett, President and Chief Executive Officer of the Company, and Robert E. Hult, Senior Vice President, Chief Financial Officer and Treasurer of the Company, certify, pursuant to Section 1350 of Chapter 63 of Title 18, United States Code, that to his knowledge the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 5, 2011

/s/ MARK ASLETT

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**Mark Aslett**  
**PRESIDENT AND CHIEF EXECUTIVE OFFICER**

/s/ ROBERT E. HULT

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**Robert E. Hult**  
**SENIOR VICE PRESIDENT,**  
**CHIEF FINANCIAL OFFICER AND TREASURER**

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.