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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 14, 2016

SYSOREX GLOBAL  
(Exact name of registrant as specified in its charter)

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Nevada  
(State or other jurisdiction  
of incorporation)

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001-36404  
(Commission File Number)

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88-0434915  
(I.R.S. Employer  
Identification No.)

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2479 E. Bayshore Road, Suite 195  
Palo Alto, CA  
(Address of principal executive offices)

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94303  
(Zip Code)

Registrant's telephone number, including area code: (408) 702-2167

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No change  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

### Asset Purchase Agreement

On November 14, 2016, Sysorex Global (the “Company”) and Sysorex Government Services, Inc., a wholly-owned subsidiary of the Company (the “Buyer”, and together with the Company, the “Buyer Parties”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Integrio Technologies, LLC, a Delaware limited liability company (“Seller”) and Emtec Federal, LLC, a Delaware limited liability company and wholly-owned subsidiary of the Seller (“Seller Sub” and together with Seller, “Seller Parties”), which are in the business of providing IT integration and engineering services to customers, primarily government agencies. Pursuant to the Purchase Agreement, the Buyer intends to acquire substantially all, with the exception of certain excluded assets described in the Purchase Agreement, of the business and assets of the Seller Parties (the “Assets”), and will assume certain specified liabilities, (the “Assumed Liabilities”) (the “Acquisition”).

The consideration to be paid for the Assets will include an aggregate of (A) \$1,800,000 in cash, of which \$1,400,000 minus the Seller’s Cash On Hand (as defined in the Purchase Agreement) and certain amounts payable to creditors of the Seller shall be paid upon the closing of the Acquisition (the “Closing”) and \$400,000 shall be paid in two (2) annual installments of \$200,000 each on the respective anniversary dates of the Closing, subject to certain set offs and recoupment by Buyer; (B) 530,000 unregistered restricted shares of the Company’s voting common stock valued at \$1.50 per share; (C) the aggregate amount of certain specified assumed liabilities; and (D) up to an aggregate of \$1,200,000 in earnout payments, of which up to \$400,000 shall be payable to the Seller per year for the three years following the Closing.

The Closing of the Acquisition is subject to the satisfaction of certain customary closing conditions.

The foregoing is a summary of the Purchase Agreement qualified in its entirety by reference to the Purchase Agreement which is filed as Exhibit 2.1 to this Current Report on Form 8-K (the “Current Report”) and is incorporated herein by reference.

The information provided in response to Item 2.03 of this Current Report with respect to the Loan Agreement, the Note and the Pre-Funding Agreement (each as defined below), is incorporated by reference into this Item 1.01.

## ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.

### Loan and Security Agreement for Revolving Secured Promissory Note

The Company and its wholly-owned subsidiaries, Sysorex USA and Sysorex Government Services, Inc. (jointly and severally, the “Borrower”), entered into a Loan and Security Agreement (the “Loan Agreement”) with GemCap Lending I, LLC, a Delaware limited liability company (the “Lender”), dated as of November 14, 2016, pursuant to which the Borrower issued and sold a revolving Secured Promissory Note in an aggregate principal amount of up to \$10,000,000 (the “Note”).

Under the terms of the Loan Agreement, and subject to the satisfaction of the conditions described in that certain Pre-Funding and Post-Closing Agreement, dated as of November 14, 2016 and described below (the “Pre-Funding Agreement”), the Lender has agreed to make revolving credit loans to the Borrower in an aggregate principal amount which does not exceed the lesser of (i) the Borrowing Base which shall be calculated at any time as the product obtained by multiplying the outstanding amount of all Eligible Accounts (as defined in the Loan Agreement), net of all taxes, discounts, allowances and credits given or claimed, by up to eighty-five percent (85%), and (ii) Ten Million Dollars (\$10,000,000) (the “Loan Amount”). As collateral security for the payment and performance of the obligations under the Loan Agreement, Borrower has granted and conveyed to Lender a first priority continuing security interest in and lien upon all now owned and hereafter acquired property and assets of Borrower now or hereafter held or possessed by Lender. The terms of the Loan Agreement will continue until all obligations under the Loan Agreement have been paid in full. Borrower may borrow, repay and reborrow revolving loans under the Note, as set forth in the Loan Agreement.

Borrowings pursuant to the Loan Agreement will bear interest at an annual rate equal to the greater of (a) 9.5% and (b) the sum of (i) the “Prime Rate” as reported in the “Money Rates” column of The Wall Street Journal, adjusted as and when such Prime Rate changes, plus (ii) 6%. The interest rate on borrowings is subject to increase by 4% if an event of default has occurred and is continuing.

In connection with the Loan Agreement, the Borrower will pay to the Lender a \$100,000 closing fee. The Lender will also receive (a) an annual line fee equal to \$100,000; (b) an unused line fee equal to 0.5% of the daily average unused portion of the maximum amount of Availability (as defined in the Loan Agreement), calculated on an annualized basis, due and payable monthly; (c) a loan administration and monitoring fee equal to 0.5% of the daily average used portion of Availability calculated on a monthly basis, due and payable monthly; and (d) certain other audit and wire fees. The closing of the transactions contemplated by the Loan Agreement are subject to the satisfaction of certain closing conditions.

Certain events, including but not limited to each of the following events shall constitute an event of default: failure to make a payment obligation or any failure to pay taxes due to any governmental authority, failure to observe certain covenants specified in the Loan Agreement or Note or related agreements (subject to applicable cure periods), breach of representation or warranty, bankruptcy, default under any agreement or contract with Hillair Capital, Avnet or any other third party which default with respect to any other third party would result in a liability to the Borrower in excess of \$20,000, any resolution shall be passed or any action (including a meeting of creditors) shall be taken by Borrower for the termination, winding up, liquidation or dissolution of Borrower, or Borrower shall make an assignment for the benefit of creditors, or Borrower shall file a petition in voluntary liquidation or bankruptcy, or Borrower shall file a petition or answer or consent seeking, or consenting to, the reorganization of Borrower.

Upon closing, the Loan Agreement will provide the Borrower with a revolving line of credit, the proceeds of which are to be used to repay in full the existing indebtedness owed to Western Alliance Bank, as successor in interest to Bridge Bank, N.A; pay certain expenses related to obtaining the revolving line of credit and for general working capital purposes.

The company has agreed to pay a fee equal to three percent (3%) of the Loan Amount to a FINRA registered placement agent in connection with the closing of the transactions contemplated by the Loan Agreement.

#### Pre-Funding and Post-Closing Agreement

In connection with the entry into the Loan Agreement, the Borrower and the Lender entered into the Pre-Funding Agreement, pursuant to which the Lender required the Borrower to deliver certain documents on or before November 28 2016, including each of the following:

- I. Patent and Trademark Security Agreement;
- II. Domain Name, URL and IP Address Assignment;
- III. Borrower's Disclosure Schedule;
- IV. Intercreditor Agreement;
- V. Certificate of officer for each Borrower;
- VI. Opinion letter from counsel to Borrower;
- VII. Payoff letter from Western Alliance Bank;
- VIII. Payoff letters from secured creditors of the Seller Parties in connection with the Acquisition;
- IX. Documents evidencing the closing of the Acquisition;
- X. Either a (i) full release and termination of all liens held by Synnex Corporation ("Synnex") against the assets of Borrower with respect to the assets, or (b) subordination agreement executed by Synnex, Borrower and Lender;
- XI. Insurance certificates and ACH agreements; and
- XII. Loan disbursement letter.

In addition, the Borrower must execute and deliver the following "Post-Funding Documents" on or before December 12, 2016: Landlord Waiver and Access Agreements (with respect to the Borrower's Premises); deposit account control agreement; and such other documents as reasonably requested by Lender.

The description of the Loan Agreement, the Note and the Pre-Funding Agreement is not complete and is qualified by the full text of such agreements and the Loan Agreement Schedule, each of which are attached hereto as Exhibit 10.1, Exhibit 10.2, Exhibit 10.3 and Exhibit 10.4 and incorporated by reference herein.

#### ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

##### (d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
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2.1*	Asset Purchase Agreement, dated as of November 14, 2016, by and among Sysorex Global, Sysorex Government Services, Inc., Integrio Technologies, LLC and Emtec Federal, LLC. The exhibits and schedules to this exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K and the registrant undertakes to furnish supplemental copies of any of the omitted exhibits and schedules upon request by the Commission.
10.1*	Loan and Security Agreement, dated as of November 14, 2016, by and between Sysorex Global, Sysorex USA, Sysorex Government Services, Inc. and GemCap Lending I, LLC.
10.2*	Loan Agreement Schedule, dated as of November 14, 2016, to the Loan and Security Agreement, dated as of November 14, 2016, by and between Sysorex Global, Sysorex USA, Sysorex Government Services, Inc. and GemCap Lending I, LLC.
10.3*	Secured Promissory Note, dated as of November 14, 2016 (Revolving Loan)
10.4*	Pre-Funding and Post-Closing Agreement, dated as of November 14, 2016, by and between Sysorex Global, Sysorex USA, Sysorex Government Services, Inc. and GemCap Lending I, LLC.

\* Filed herewith.

**SIGNATURE**

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

**SYSOREX GLOBAL**

Date: November 18, 2016

By: /s/ Nadir Ali

Name: Nadir Ali

Title: Chief Executive Officer

**Exhibit Index**

**Exhibit No. Description**

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10.4*	Pre-Funding and Post-Closing Agreement, dated as of November 14, 2016, by and between Sysorex Global, Sysorex USA, Sysorex Government Services, Inc. and GemCap Lending I, LLC.

\* Filed herewith.

**ASSET PURCHASE AGREEMENT**

**among Integrio Technologies, LLC  
("Seller"),**

**Emtec Federal, LLC ("Seller Sub"),**

**Sysorex Government Services, Inc.  
("Buyer") and**

**Sysorex Global  
("Parent")**

**Dated as of November 14, 2016**

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is dated as of November 14, 2016 by and among Integrio Technologies, LLC, a Delaware limited liability company ("Seller"); Emtec Federal, LLC, a Delaware limited liability company and wholly-owned subsidiary of Seller ("Seller Sub" and together with Seller, "Seller Parties"); Sysorex Global, a Nevada corporation ("Parent"); and Sysorex Government Services, Inc., a Virginia corporation and wholly-owned subsidiary of Parent ("Buyer", and together with the Parent, the "Buyer Parties").

RECITALS

WHEREAS, Seller Parties desire to sell, and Buyer desires to purchase, the Assets of the Business (as each such term is hereinafter defined) of Seller Parties for the consideration and on the terms set forth in this Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

**ARTICLE I  
DEFINITIONS AND USAGE**

Section 1.1 Definitions. Capitalized terms not defined in this Section 1.1 shall have the meanings ascribed to them elsewhere in this Agreement. For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Payable" - all trade accounts payable and accruals (other than Tax accruals) of Seller Parties to Persons arising in the Ordinary Course of Business.

"Accounts Receivable" - all trade accounts receivable and other rights of payment from customers of Seller Parties, all other accounts and notes receivable of Seller Parties and the full benefits or right of payment of all security for such accounts, and any claim, remedy, or other right relating to the foregoing.

"Acquisition Proposal" - shall have the meaning ascribed to it in Section 5.12(c)

"Active Employees" - shall have the meaning ascribed to it in Section 5.1(a).

"Adjustment Amount" - shall have the meaning ascribed to it in Section 2.3(b)(i).

"Adjustment Amount Calculation" - shall have the meaning ascribed to it in Section 2.3(b)(ii).

"Aggregate Share Consideration" - shall have the meaning ascribed to it in Section 2.3(a)

"Annual Cash Payments" - shall have the meaning ascribed to it in Section 2.3(a).

"Annual Financial Statements" - shall have the meaning ascribed to it in Section 3.17(a)(i).

"AR Collection Deadline" - shall have the meaning ascribed to it in Section 2.3(b)(i).

"Assets" - shall have the meaning ascribed to it in Section 2.1.

"Assignment and Assumption Agreement" - shall have the meaning ascribed to it in Section 2.7(a)(i)(B).

“Assumed Liabilities” - shall have the meaning ascribed to it in Section 2.6.

“Assumed Seller Contracts” – shall have the meaning ascribed to it in Section 2.1.

“Best Efforts” - the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible.

“Bill of Sale” - shall have the meaning ascribed to it in Section 2.7(a)(i)(A).

“Breach” - any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

“Business” - the business as a value added reseller and provider of information technology and infrastructure and profession services primarily to the federal government, systems integrators and certain commercial customers.

“Business Day” - shall have the meaning ascribed thereto in Rule 14d-1(g)(3) under the Exchange Act.

“Buyer Indemnified Persons” – shall have the meaning ascribed to it in Section 6.2.

“Buyer’s Closing Documents” - shall have the meaning ascribed to it in Section 4.2(a).

“Cash Consideration” - shall have the meaning ascribed to it in Section 2.3(a).

“Closing” – the time on the Closing Date when all of the obligations and conditions set forth in Section 2.7 have been satisfied or waived and when the Contemplated Transactions have been consummated.

“Closing Cash” - shall have the meaning ascribed to it in Section 2.3(a).

“Closing Date”- the date on which the Closing occurs.

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

“Competing Business” - shall have the meaning ascribed to it in Section 3.26.

“Confidential Information” - shall have the meaning ascribed to it in Section 7.1.

“Consent” - any approval, consent, ratification, waiver or other authorization.

“Contemplated Transactions” - all of the transactions contemplated by this Agreement.

“Contract” - any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied) that is legally binding.

“Copyrights” - shall have the meaning ascribed to it in Section 3.23(a)(iii).

“Covered Person” shall have the meaning ascribed to it in Section 3.30.

“Damages” - shall have the meaning ascribed to it in Section 6.2.

“Debt” - means (i) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (ii) all obligations for the deferred purchase price of capital assets (excluding normal trade terms for capital assets purchased in the Ordinary Course of Business), (iii) all obligations under conditional sales or other title retention agreements, (iv) all reimbursement and other obligations (contingent or otherwise) under any letter of credit, banker’s acceptance, currency swap agreement, interest rate swap, cap, collar, or floor agreement or other interest rate management device.

“Deferred Consent” - an agreement to assign or transfer any Contract, Consent or Governmental Authorization, or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment or transfer thereof, without the consent of a third party thereto or of the issuing Governmental Body, as the case may be, would constitute a breach thereof.

“Deferred Item” - the Contract, Consent or Governmental Authorization to which Deferred Consent relates.

“Defined Benefit Plan” - shall have the meaning ascribed to it in Section 3.14(a).

“Delivery Date” - shall have the meaning ascribed to it in Section 2.3(b)(ii).

“Disclosing Party” - shall have the meaning ascribed to it in Section 7.1.

“Disclosure Letter” - the letter delivered by Seller Parties to Buyer concurrently with the execution and delivery of this Agreement containing schedules that constitute exceptions to, or other disclosures required by, the representations and warranties of Seller Parties contained in Article III of this Agreement.

“Disqualification Event” shall have the meaning ascribed to it in Section 3.30.

“Domain Names” - shall have the meaning ascribed to it in Section 3.23(a)(v).

“Earnout Payments” - those amounts owing to Seller under Section 2.3(c).

“Earnout Period” - the period which will terminate on the earlier of the following: (i) the date when the cumulative amount paid as Earnout Payments equals \$1,200,000 (subject to adjustment in accordance with Section 2.3(b) and Article VI); or (ii) the third anniversary of the Closing Date.

“Earnout Report” - shall have the meaning ascribed to it in Section 2.3(d).

“Earnout Report Deadline” – shall have the meaning ascribed to it in Section 2.3(d).

“Earnout Representative” - shall have the meaning ascribed to it in Section 2.3(e)(i).

“Election Date” - shall have the meaning ascribed to it in Section 2.3(b)(i).

“Employee Plans” - all “employee benefit plans” as defined by Section 3(3) of ERISA, all specified fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding.

“Encumbrance” - any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental, Health and Safety Liabilities” - any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law.

“Environmental Law” - any Legal Requirement that requires or relates to preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the environment.

“ERISA” - the Employee Retirement Income Security Act of 1974.

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

“Excluded Assets” - shall have the meaning ascribed to it in Section 2.2.

“Financial Records” - shall have the meaning ascribed to it in Section 3.4.

“Financial Statements” - shall have the meaning ascribed to it in Section 3.17(a)(iii).

“GAAP” - generally accepted accounting principles in the United States of America.

“Governing Documents” - with respect to any corporation or limited liability company, (a) its certificate or articles of incorporation or formation and its bylaws or operating agreement, as applicable; (b) all equityholders’ agreements, voting agreements, voting trust agreements, or other agreements or documents relating to the organization, management or operation of the corporation or limited liability company or relating to the rights, duties and obligations of the equity holders of the corporation or limited liability company; and (c) any amendment or supplement to any of the foregoing.

“Governmental Authorization” - any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body” - any federal, state, local, municipal, foreign or other government, including any governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), any multinational organization or body, anybody exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or any official of any of the foregoing.

“Guarantor” shall have the meaning ascribed to it in the second Recital.

“Hired Active Employees” - shall have the meaning ascribed to it in Section 5.1(b)(i)

“Independent Accountant” - shall have the meaning ascribed to it in Section 2.3(d)

“Independent Accounting Firm” – shall have the meaning ascribed to it in Section 2.3(b)(iii).

“Investor Representation Statement” - shall have the meaning ascribed to it in Section 2.10.

“IRS” - the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

“Intellectual Property Assets” - shall have the meaning ascribed to it in Section 3.23(a).

“Interim Financial Statements” - shall have the meaning ascribed to it in Section 3.17(a)(ii).

“Knowledge” - a Person will be deemed to have Knowledge of a particular fact or other matter if that Person is actually aware of that fact or matter or if a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

“Latest Balance Sheet” - shall have the meaning ascribed to it in Section 3.17(a)(ii)(A).

“Latest Balance Sheet Date” - shall have the meaning ascribed to it in Section 3.17(a)(ii)(A).

“Lease” - any real property lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

“Lease Assignments” shall have the meaning ascribed to it in Section 2.7(a)(i)(O).

“Legal Requirement” - any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

“Liability” - with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Majority Members” - shall have the meaning ascribed to it in Section 10.1.

“Marks” - shall have the meaning ascribed to it in Section 3.23(a)(i).

“Material Adverse Effect” - any event, change or effect which has a material adverse effect on (i) the Business, the Assets, or the Liabilities, results of operations or financial condition of Seller Parties, (ii) a material adverse effect on the ability of Seller Parties to consummate the Contemplated Transactions, or (iii) Buyer’s ability to operate the Business immediately after Closing in the manner operated by Seller Parties before Closing; provided, however, that a Material Adverse Effect with respect to Seller Parties shall not include (i) changes in the United States or world financial markets or general business or economic conditions, (ii) developments, trends or conditions related to the industries in which Seller Parties operate as of the date hereof except where the same has had or would reasonably be expected to have a disproportionate effect on Seller Parties as compared to other Persons operating in such industries, (iii) effects arising from changes in United States or world political or social conditions, including war or terrorism, (iv) changes in GAAP or interpretations thereof, (v) changes in any Legal Requirement or the proposal or enactment of any new Legal Requirement except where such change or proposal has had or would reasonably be expected to have a disproportionate effect on Seller Parties as compared to other Persons operating in the same industries as Buyer as of the date hereof, (vi) the execution or announcement of, or the taking of any actions with respect to, this Agreement or any of the Contemplated Transactions, or (vii) any condition that is substantially cured before the earlier of the Closing Date or the date on which this Agreement is terminated pursuant to Article VIII.



“Member Representative” - shall have the meaning ascribed to it in Section 10.1.

“Multiemployer Plan” - shall have the meaning ascribed to it in Section 3.14(a).

“NDAs” – shall have the meaning ascribed to it in Section 2.7(a)(i)(J).

“Net Revenue” - the net amount of revenue attributable to Seller Parties’ Business, as recognized by Buyer in accordance with US GAAP applied to revenue in accordance with Buyer’s then-existing corporate policies, less product returns, royalties paid by Buyer to third parties for the products and services attributable to Seller’s Business, discounts including but not limited to customer and distributor discounts, and excluding amounts invoiced for any other product, shipping, taxes, duties or other similar amounts.

“Non-Assignable Contract” – shall have the meaning ascribed to it in Section 5.15(a).

“Notice of Contest Period” - shall have the meaning ascribed to it in Section 6.4(b).

“Novation Agreement” – shall have the meaning ascribed to it in Section 5.15.

“Novation Failure” - shall have the meaning ascribed to it in Section 6.7.

“Novation Failure Amount” - shall have the meaning ascribed to it in Section 6.7.

“Objection Deadline” - shall have the meaning ascribed to it in Section 2.3(b)(iii).

“Objection Notice” - shall have the meaning ascribed to it in Section 2.3(b)(iii).

“Occupational Safety and Health Law” - any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Order” - any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

“Ordinary Course of Business” - an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;
- (b) does not require authorization by the board of directors or managers, members or stockholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and
- (c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

“Parent Offering Materials” - shall have the meaning ascribed to it in Section 2.7(d).

“Patents” - shall have the meaning ascribed to it in Section 3.23(a)(ii).

“Permitted Encumbrances” - shall have the meaning ascribed to it in Section 3.8.

“Person” - an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

“Proceeding” - any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Purchase Price” - shall have the meaning ascribed to it in Section 2.3(a).

“Receiving Party” - shall have the meaning ascribed to it in Section 7.1

“Record” - information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Regulation D” - Regulation D promulgated under the Securities Act.

“Related Person” - With respect to a particular individual:

- (a) each other member of such individual’s Family;
- (b) any Person that is directly or indirectly controlled by any one or more members of such individual’s Family;
- (c) any Person in which members of such individual’s Family hold (individually or in the aggregate) a Material Interest; and
- (d) any Person with respect to which one or more members of such individual’s Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

- (a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;
- (b) any Person that holds a Material Interest in such specified Person;
- (c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);
- (d) any Person in which such specified Person holds a Material Interest; and
- (e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) “control” (including “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the “Family” of an individual includes (i) the individual, (ii) the individual’s spouse, (iii) any other natural person who is related to the individual or the individual’s spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) “Material Interest” means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

“Representative” - with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“Restricted Period” - shall have the meaning ascribed to it in Section 2.9(b).

“Restricted Transactions” - shall have the meaning ascribed to it in Section 2.9(b).

“Retained Liabilities” - shall have the meaning ascribed to it in Section 2.6(b).

“SEC” - the U.S. Securities and Exchange Commission.

“SEC Documents” - shall have the meaning ascribed to it in Section 4.3.

“Securities Act” - the Securities Act of 1933, as amended.

“Seller Cash On Hand” – shall have the meaning ascribe to it in Section 2.2.

“Seller Closing Documents” - shall have the meaning ascribed to it in Section 3.2(a).

“Seller Contract” - any Contract relating to the Business (a) under which Seller Parties have or may acquire any rights or benefits; (b) under which Seller Parties have or may become subject to any obligation or liability; or (c) by which Seller Parties or any of the assets owned or used by Seller Parties in connection with the Business is or may become bound.

“Seller Indemnified Parties” - shall have the meaning ascribed to it in Section 6.3.

“Seller Members” - the holders of membership interests of Seller.

“Set-off Claims Notice” – shall have the meaning ascribed to it in Section 6.4.

“Share Consideration Recipient” shall have the meaning ascribed to it in Section 2.7(a)(i)(I).

“Software” - all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes, hardware used to deliver such software and other items and documentation related thereto or associated therewith.

“Specified Assumed Liabilities” – shall have the meaning ascribed to it in Section 2.6(a)(iii)

“Synnex” – Synnex Corporation.

“Synnex Cash” – shall have the meaning ascribed to it in Section 2.2.

“Synnex FSA” – means that certain Fulfillment Services Agreement, dated July, 29, 2013, by and between the Seller (f/k/a Spectrum Systems LLC) and Synnex.

“Synnex Payoff Amount” – shall mean the amount required to be paid at the Closing to Synnex to satisfy in full and pay off any amount outstanding under the Loan and Security Agreement by and among the Seller Parties and Synnex dated as of August 26, 2013, minus the Synnex Cash as of the Closing Date, which amount shall be retained by Synnex to pay off a portion of such loan.

“Tangible Personal Property” - all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property, including any inventories, of every kind owned or leased by Seller Parties (wherever located and whether or not carried on Seller Parties’ books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

“Tax” - any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees’ income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract.

“Tax Return” - any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Third Party” - a Person that is not a party to this Agreement.

“Third-Party Claim” - any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

“Third-Party Software” means any off-the-shelf software program, utility, tool, or application, or any software program which was not developed at the specific request or direction of Seller Parties.

“Threshold” shall have the meaning ascribed to it in Section 6.2.

“Termination Date” - shall have the meaning ascribed to it in Section 8.1(c).

“Trade Secrets” - shall have the meaning ascribed to it in Section 3.23(a)(iv).

Section 1.2 Usage: Interpretation. In this Agreement, unless a clear contrary intention appears (i) the singular number includes the plural number and vice versa; (ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (iii) reference to any gender includes each other gender; (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (vi) “hereunder,” “hereof,” “hereto,” “herewith” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; (viii) use of the word “or” is used in the inclusive sense of “and/or”; (ix) with respect to the determination of any period of time, use of the word “from” means “from and including” and “to” means “to but excluding”; and (x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

Section 1.3 Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

**ARTICLE II  
SALE AND TRANSFER OF ASSETS; CLOSING**

Section 2.1 Assets to be Sold. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing Seller Parties shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller Parties, free and clear of any Encumbrances other than Permitted Encumbrances, as defined in Section 3.8, all of Seller Parties' right, title and interest in and to all of the Assets (as defined below). Upon the terms and conditions herein set forth, at the Closing, Purchaser hereby agrees to purchase, acquire, and accept from Seller all of Seller's right, title, and interest in and to all of the Assets, free and clear of all Encumbrances. For purposes of this Agreement and the Ancillary Agreements, "Assets" means all of the business, assets, and goodwill owned by Seller Parties on the Closing Date of every kind and description, wherever located, known or unknown, tangible or intangible, whether reflected on Seller Parties' books and records or not, which are not Excluded Assets, including, without limitation, the following:

- (a) Accounts Receivable. All Accounts Receivable, including (without limitation) those Accounts Receivable set forth on Schedule 3.11.
- (b) Contracts. All Seller Contracts approved by Buyer, a proposed list of which Seller shall deliver to Buyer prior to the Closing Date and which list shall be subject to Buyer's approval in its sole discretion and upon such approval shall be attached hereto as Schedule 2.1(b) (the "Assumed Seller Contracts").
- (c) Tangible Personal Property. All equipment, furniture, computer hardware and software, fixtures, motor vehicles, leasehold improvements, supplies, and other tangible personal property owned or employed in the operation of the Business, including, without limitation, the personal property described in Schedule 2.1(c) and all rights to the warranties received from the manufacturers and distributors of all such personal property and fixtures and any related claims, credits, rights of recovery and setoffs with respect to such personal property and fixtures;
- (d) Intellectual Property Assets. All Intellectual Property Assets and other software used by Seller Parties to operate the Business, including, without limitation, all rights to the name "Integrio Technologies, LLC", or any derivation thereof, and all rights to the registered Intellectual Property Assets of Seller Parties set forth on Schedules 3.23(b) and 3.23(c);

- (e) Permits and Governmental Authorizations. All permits and Governmental Authorizations relating to the Business as of the close of business on the Closing Date, including, without limitation, the items set forth on Schedule 3.15(d), to the extent actually assignable or transferable;
- (f) Intangible Assets. All rights to indemnification, all telephone or facsimile numbers, and electronic mail addresses used in connection with the Business and all goodwill and going concern value associated with the Business;
- (g) Books and Records. All books and Records (including all discs, tapes, flash drives and other data storage devices and stored information) relating to the Business;
- (h) Other Records, Manuals, and Documents. Seller Parties' right, title, and interest in and to all of the following to the extent that they relate to the Business: mailing lists, customer lists, supplier lists, vendor data, marketing information, and procedures, sales and customer files, advertising and promotional materials, current product material, equipment maintenance records, warranty information, standard forms of documents, manuals of operations or business procedures and other similar procedures, and all other information of Seller relating to the Business;
- (i) Insurance Claims. The amount of any proceeds to Seller Parties under any policy of insurance covering the Assets or the Business as a result of any claim made against such policies of insurance due to damage to the Assets or the Business prior to the Closing Date that is paid to Seller Parties after the date of this Agreement;
- (j) Litigation Claims. All claims, causes of action, choses in action of Seller Parties against Third Parties, and rights of recovery and rights under all warranties, representations and guarantees made by suppliers of products, materials or equipment or components thereof, arising from or relating to the other Assets; and
- (k) Deposits and Prepaid Expenses. All deposits and prepaid expenses.

Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets or any other Liability of Seller Parties, unless Buyer expressly assumes that Liability pursuant to Section 2.6(a).

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller Parties (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller Parties after the Closing:

- (a) all company minute books, equity interests in any entity, equity transfer books, company seals, if any and other documents and records relating to the organization, maintenance and existence of Seller Parties as limited liability companies and other records having exclusively to do with Seller Parties' organization, capitalization or internal affairs between the Seller Parties and its members, all Records related to Seller Parties' Benefit Plans, and Seller Parties' databases and files and Records relating to employees or personnel matters; provided, however, that the Buyer Parties shall have reasonable access to such Records and may make excerpts therefrom and copies thereof;

- (b) all Tax Returns filed by Seller Parties and associated Tax Records, and all other Records that Seller Parties are required by law to retain in their possession, provided that copies of all such items shall be provided to Buyer prior to the Closing;
- (c) all claims for refund of Taxes and other governmental charges of whatever nature relating to Seller Parties or the Assets arising prior to the Closing;
- (d) all rights of Seller Parties under this Agreement, the Bill of Sale, and the Assignment and Assumption Agreement including the consideration delivered by the Buyer Parties to the Seller Parties in accordance with the terms and conditions of this Agreement and any Contract between or among Seller and the Seller Members;
- (e) all taxpayer and other identification numbers;
- (f) all property, casualty, and individual life insurance policies owned or obtained by Seller Parties on behalf of the Business including the proceeds of such insurance policies and rights thereunder relating to Excluded Assets, as well as all director and officer insurance policies;
- (g) all cash, cash equivalents and short-term investments of Seller Parties, the accounts of Seller Parties with any bank, savings and loan or other financial institution (the "Seller Cash On Hand"); and
- (h) any amount payable to Seller under the Synnex FSA (the "Synnex Cash").

Section 2.3 Consideration.

(a) Purchase Consideration. The aggregate purchase price for the Assets (the "Purchase Price"), will consist of (A) \$1,800,000 in cash, of which \$1,400,000 *minus* the sum of the Synnex Cash, Seller Cash On Hand and the Synnex Payoff Amount (which will be paid directly to Synnex at the Closing by Buyer in accordance with the payoff and estoppel letter pursuant to Section 2.7(a)(i)(H) provided by Synnex to Buyer) (the "Closing Cash") shall be paid at Closing and \$400,000 shall be paid in two (2) annual installments of \$200,000 each on the respective anniversary dates of the Closing, subject to set off and recoupment by Buyer, in accordance with Article VI (the "Annual Cash Payments" and together with the Closing Cash, the "Cash Consideration"); (B) 530,000 unregistered restricted shares of Parent's voting common stock valued at \$1.50 per share (the "Aggregate Share Consideration"), to be allocated as provided in a supplemental Schedule 2.3(a) to be delivered by Seller to Buyer at the Closing; (C) the aggregate amount of the Specified Assumed Liabilities; and (D) the Earnout Payments described in Section 2.3(c) below, subject to set off and recoupment by Buyer, in accordance with Article VI.

(b) Post-Closing Adjustment.

(i) Adjustment Amount. Buyer shall use its best efforts in cooperation with the Member Representative to collect the Accounts Receivable, and if any of the Accounts Receivable reflected on Schedule 3.11 are not collected within one hundred and twenty (120) days following the Closing Date (the "AR Collection Deadline"), then, at Buyer's election in its sole discretion, the amount of such uncollected Accounts Receivable shall be treated as a post-Closing negative adjustment to the Purchase Price on a dollar for dollar basis (the "Adjustment Amount"), in which event all uncollected Accounts Receivable included within the Adjustment Amount (as finally determined in accordance herewith) shall be assigned to Seller for the benefit of Seller. Buyer may notify Seller or the Member Representative in writing of such election at any time from the AR Collection Deadline through the Earnout Report Deadline (as defined below) for the fiscal year ended December 31, 2016 (such notice date being the "Election Date"). If Buyer fails to deliver such notice before the Election Date, this Section 2.3(b) shall immediately terminate and be of no further force or effect.

(ii) Adjustment Amount Calculation. As soon as practicable after the Election Date, but not later than the Earnout Report Deadline, Buyer shall deliver to Member Representative (such date of delivery, the "Delivery Date") its good faith determination of the Adjustment Amount (the "Adjustment Amount Calculation"), if any. During the period from the Closing Date until the Delivery Date, Member Representative shall give Buyer and its agents such access to the books and records of Seller Parties as Buyer and its agents shall reasonably request during normal business hours in order to enable them to calculate the Adjustment Amount Calculation. During the period between the Delivery Date and the Objection Deadline (as defined below), Member Representative and Seller Parties' accountants shall be given reasonable access to the books and records of Buyer upon reasonable notice to verify the Adjustment Amount Calculation.

(iii) Resolution of Protest. Within thirty (30) days after the Delivery Date (the "Objection Deadline"), the Member Representative may deliver to Buyer a notice of objection (an "Objection Notice") with respect to the Adjustment Amount Calculation. If no Objection Notice regarding the Adjustment Amount Calculation is delivered by the Member Representative to Buyer by the Objection Deadline, the Adjustment Amount Calculation shall be final and binding on the parties hereto as the Adjustment Amount. Any Objection Notice regarding the Adjustment Amount Calculation shall specify the items in the Adjustment Amount Calculation disputed by the Member Representative and shall describe the basis for the objection, as well as the amount in dispute. Any other items not so disputed by the Member Representative shall be deemed "agreed upon". If an Objection Notice is delivered in accordance with this Section 2.3(b)(iii), Buyer and the Member Representative shall consult with each other with respect to the objection set forth therein. If Buyer and the Member Representative are unable to reach agreement within fifteen (15) days after an Objection Notice has been given, all unresolved disputed items shall be promptly referred to an independent auditor which (i) has never provided services to either Buyer or Seller Parties and (ii) is mutually acceptable to Buyer and the Member Representative (the "Independent Accounting Firm"). The Independent Accounting Firm shall be directed to render a written report on the unresolved disputed issues with respect to the Adjustment Amount Calculation as promptly as practicable, but in no event more than thirty (30) days after such submission to the Independent Accounting Firm, and to resolve only those issues of dispute set forth in the Objection Notice. If unresolved disputed issues are submitted to the Independent Accounting Firm, Buyer and the Member Representative will each furnish to the Independent Accounting Firm such bank statements and other documents and information relating to the unresolved disputed issues as the Independent Accounting Firm may reasonably request. The Independent Accounting Firm shall establish the procedures it shall follow (including procedures with regard to the presentation of evidence) giving due regard to the mutual intention of Seller and Buyer to resolve the disputed items and amounts as quickly, efficiently and inexpensively as possible. The resolution of the dispute and the calculation of the Adjustment Amount by the Independent Accounting Firm shall be final and binding on the parties hereto. The fees and expenses of the Independent Accounting Firm shall be allocated between Buyer and Seller in the proportion that the amounts determined by the Independent Accounting Firm against each party bears to the total amount in dispute (determined with respect to dollar amount).

(iv) Payment of Adjustment Amount. If there is an Adjustment Amount, Buyer's available methods for recouping the Adjustment Amount shall be (i) first, to withhold the Annual Cash Payments, or any portion thereof and (ii) then, in the event that the Annual Cash Payments are not sufficient to recoup the Adjustment Amount, to withhold Earnout Payments otherwise due pursuant to Section 2.3(c) below on a dollar for dollar basis. Any Accounts Receivable received by Seller for which a portion of the Annual Cash Payments has been withheld or there has been a reduction in Earnout Payment shall be for the account of Seller.



(c) Earnout Payments. Buyer will pay Seller Earnout Payments, if any, up to a maximum of \$400,000 during each year of the Earnout Period in an amount equal to two-thirds percent (0.67%) of the Net Revenues generated from the Business during the Earnout Period from customers of Seller who were customers during the twenty-four (24) month period prior to the Closing and identified on Schedule 2.3(c), calculated as of the end of each fiscal year end of the Buyer, beginning as of the fiscal year ended December 31, 2016.

(d) Earnout Calculation; Interpretation. Within thirty (30) days following the filing of Parent's Annual Report on Form 10-K for each fiscal year during the Earnout Period ("Earnout Report Deadline"), Buyer shall prepare and deliver to the Earnout Representative a report (the "Earnout Report") setting forth its determination of (i) whether and to what extent an Earnout Payment is due and setting forth claimed Adjustment Amounts, if applicable and (ii) the resulting Earnout Payment shall be due and payable in cash, within ninety (90) days following the filing of Parent's Annual Report on Form 10-K for each fiscal year during the Earnout Period. In the event that the Earnout Representative has any dispute with the Earnout Report, the Earnout Representative shall notify Buyer in writing within thirty (30) days following receipt of the Earnout Report. If Earnout Representative disputes the Earnout Report within such thirty (30) day period, Buyer and the Earnout Representative shall negotiate in good faith for a period of up to thirty (30) days in an effort to mutually agree upon the amount of the relevant Earnout Payment. If the dispute is not resolved within such thirty (30) day negotiation period, then Buyer and Earnout Representative shall engage Buyer's independent auditor (the "Independent Accountant") to render a determination of the Earnout Payment due based on Buyer's Records as they relate to the Earnout Payment. The costs for the Independent Accountant shall initially be split evenly between Buyer and Seller, with the prevailing party to be reimbursed by the non-prevailing party following the Independent Accountant's decision. The amount of any Earnout Payment shall be deemed to be finally determined upon the earliest of (i) the Earnout Representative's written acceptance of the Earnout Report; (ii) the Earnout Representative's failure to dispute the Earnout Report within the thirty (30) day period set forth above; (iii) the mutual agreement of Buyer and the Earnout Representative; or (iv) the Independent Accountant's determination.

(e) Earnout Representative.

(i) Appointment; Administration. Following the Closing, Seller's rights hereunder with respect to the Earnout shall be exercised and administered on Seller's behalf by Greg Chandler or his designated successor (the "Earnout Representative").

(ii) Earnout Representative Expenses. In the event that the Earnout Representative determines to hire or retain any attorneys, accountants or other subject matter experts or to incur any third party costs or expenses in connection with any dispute resolution process on Seller's behalf, all such fees, costs and expenses shall be the sole responsibility of Seller.

Section 2.4 Allocation of Purchase Price. As soon as practicable after the Closing, Buyer shall deliver to Member Representative a statement setting forth an allocation of the Purchase Price among the Assets for Tax purposes in accordance with Section 1060 of the Code, any applicable Treasury Regulations, and IRS Form 8594 and the Instructions thereto. Buyer and Member Representative will follow and use such allocation in all Tax Returns, filings, or other related reports made by any of them to any governmental agencies. To the extent that disclosures of this allocation are required to be made by the parties to the IRS under the provisions of Section 1060 of the Code, or any regulations thereunder, Buyer and Member Representative will disclose such reports to the other party prior to filing them with the IRS. After any adjustment to the Purchase Price or the payment of any Earnout Payments, such adjustment or payment shall be treated as an adjustment to the Purchase Price and Buyer shall deliver to Member Representative a statement setting forth how the adjustment is to be allocated among the Assets.

Section 2.5 Sales and Transfer Taxes. Seller Parties and Buyer agree that the cost of any sales, use, stamp, registration, transfer or other Tax or recording fees and charges imposed on Seller Parties or Buyer by any Governmental Body as a result of the sale of the Assets or the consummation of the transactions contemplated by this Agreement, if any, shall be paid by Seller.

Section 2.6 Liabilities.

- (a) Assumed Liabilities. On the Closing Date, Buyer shall assume and agree to discharge only the following Liabilities of Seller Parties (the “Assumed Liabilities”):
- (i) any Liability arising after the Closing Date in connection with or incidental to Buyer’s ownership of the Assets after the Closing (other than any Liability arising out of or relating to a Breach that occurred prior to the Closing Date); and
  - (ii) any Liability arising after the Closing Date under the Assumed Seller Contracts (other than any Liability arising out of or relating to a Breach that occurred prior to the Closing Date);
  - (iii) the outstanding Accounts Payable, unearned revenue, accrued cost of goods sold, and payroll-related Liabilities of the Seller Parties identified on Schedule 2.6(a)(iii) (the “Specified Assumed Liabilities”).
- (b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. “Retained Liabilities” shall mean every Liability of Seller Parties other than the Assumed Liabilities as set forth in Section 2.6(a), whether incurred before, after or on the Closing Date.

Section 2.7 Closing Obligations and Conditions. At the Closing.

- (a) as a condition to Buyer’s and Parent’s obligations at the Closing:
- (i) Seller Parties shall deliver to Buyer at the Closing:
    - (A) a bill of sale for all of the Assets in the form of Exhibit A (the “Bill of Sale”) executed by Seller Parties;
    - (B) an assignment of all the Assumed Liabilities to Buyer, which assignment shall be in the form of Exhibit B and also contain Buyer’s undertaking and assumption of the Assumed Liabilities (the “Assignment and Assumption Agreement”) executed by Seller Parties;
    - (C) separate assignment of all Domain Names, in the form of Exhibit C attached hereto, executed by Seller Parties and Buyer and notarized by a licensed notary;
    - (D) such other deeds, bills of sale, assignments, certificates of title, documents or other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance satisfactory to Buyer and its legal counsel and executed by Seller Parties;
    - (E) the Consents listed on Schedule 2.7(a) with respect to Seller Contracts, which Buyer will assist Seller in good faith with obtaining;

(F) a certificate executed by Seller Parties as to the accuracy of their respective representations and warranties as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing;

(G) a certificate of the Secretary of Seller Parties (1) certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller Parties (as certified, where feasible, by the Secretary of State of Delaware, as of a recent date), (2) certifying, as complete and accurate as of the Closing, attached copies of all requisite resolutions or actions of Seller Parties' boards of managers approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and the change of Seller's name contemplated by Section 5.13, (3) certifying to the incumbency and signatures of the officers of Seller Parties executing this Agreement and any other document relating to the Contemplated Transactions, and (4) attaching certificates as of a date not earlier than the tenth business day prior to the Closing Date as to the good standing of Seller Parties, executed by the appropriate officials of the State of Delaware and each jurisdiction in which Seller Parties are licensed or qualified to do business as a foreign limited liability company as specified on Schedule 3.1;

(H) evidence reasonably satisfactory to Buyer that all outstanding obligations of the Seller Parties, other than the Assumed Liabilities, set forth on Schedules 3.10(a) and 3.10(b) have been paid off and satisfied in full, including releases of all Encumbrances on the Assets, other than Permitted Encumbrances, each as evidenced by a Payoff and Estoppel Letter in the form attached hereto as Exhibit D, to be delivered by Seller Parties to Buyer evidencing the release of each such Encumbrance;

(I) a completed and executed Investor Representation Statement of each recipient of the Aggregate Share Consideration (each, a "Share Consideration Recipient" and collectively, the "Share Consideration Recipients");

(J) Buyer's standard form of Non-Disclosure Agreement executed by each Hired Active Employee (the "NDAs");

(K) satisfactory evidence that all legal counsel to Seller Parties has been paid in full for all services rendered in connection with the negotiation of this Agreement and the Contemplated Transactions;

(L) an executed copy of the Sub-Contractor Agreement between Buyer and Seller Parties in the form attached hereto as Exhibit F (the "Sub-Contractor Agreement");

(M) unaudited consolidated financial statements of Seller for each of the three fiscal years ended December 31, 2013, 2014 and 2015, and consolidated financial statements of Seller for the interim period ended September 30, 2016;

(N) such other documents or information as Buyer may reasonably request for the purpose of completing its due diligence review of Seller Parties and the Business, including, without limitation, (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller Parties, or the compliance by Seller Parties with, any covenant or obligation required to be performed or complied with by Seller Parties pursuant to this Agreement, or (iii) otherwise facilitating the consummation or performance of any of the Contemplated Transactions, it being understood and agreed that Buyer's obligations at the Closing are conditioned upon Buyer's satisfaction, in its sole discretion, with the results of its due diligence review of Seller Parties and the Business;

(O) an assignment of all the Real Property Leases set forth on Schedule 3.7 to Buyer, which assignment shall be in the form attached hereto as Exhibit G (the "Lease Assignments") executed by Seller Parties and the applicable landlord a party to such Real Property Leases; and

(P) settlement letters in a form approved by the Buyer and addressed to the Buyer Parties with respect to any Accounts Payable assumed by the Buyer and payable after the Closing date.

(ii) Buyer shall be satisfied in its sole discretion with the results of its due diligence review of Seller Parties and the Business;

(iii) no breach of any covenant or failure of any representation or warranty made by Seller Parties;

(iv) absence of any Material Adverse Effect with respect to Seller Parties; and

(v) no injunctions prohibiting the consummation of the Contemplated Transactions.

(b) As a condition to Seller Parties' obligations at the Closing:

(i) Parent and Buyer shall deliver to Seller:

(A) certificates representing the Aggregate Share Consideration;

(B) the Assignment and Assumption Agreement; executed by Buyer;

(C) the NDAs executed by Buyer;

(D) the Sub-Contractor Agreement, executed by Buyer;

(E) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing;

(F) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying that the execution and delivery of this Agreement and the consummation of the Contemplated Transactions has been approved by all requisite authority and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions;

(G) a certificate as of a date not earlier than the tenth business day prior to the Closing Date as to the good standing of Buyer, executed by the appropriate officials of the State of Virginia; and

(H) the Lease Assignments, executed by Buyer.

(ii) no breach of any covenant or failure of any representation or warranty made by Buyer; and

(iii) no injunctions prohibiting the consummation of the Contemplated Transactions.

(c) Parent shall deliver to the Transfer Agent instructions as to the issuance of stock certificates representing the shares comprising the Aggregate Share Consideration, to be allocated by Seller as provided in Schedule 2.3(a); and

(d) If any of the Share Consideration Recipients are not accredited investors within the meaning of Rule 501 of Regulation D, then Parent shall deliver to the Share Consideration Recipients the information required to be delivered to non-accredited investors pursuant to Rule 502 of Regulation D (the "Parent Offering Materials"), in order for Parent's issuance of the Aggregate Share Consideration to be exempt from registration pursuant to Rule 506 of Regulation D.

Section 2.8 Deferred Consents. Anything in this Agreement to the contrary notwithstanding, neither this Agreement nor the Assignment and Assumption Agreement shall constitute an agreement to assign or transfer any contract, lease, authorization, license or Governmental Authorization, or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment or transfer thereof, without the consent of a third party thereto or of the issuing Governmental Body, as the case may be, would constitute a breach thereof. It shall be the Seller Parties' responsibility to obtain any such Deferred Consent(s). If a Deferred Consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would affect the rights thereunder so that Buyer would not receive all such rights, then, in each such case, (a) the Deferred Item shall be withheld from sale pursuant to this Agreement without any reduction in the Purchase Price, (b) from and after the Closing, Seller Parties, the Member Representative and Buyer will cooperate, in all reasonable respects, to obtain such Deferred Consent as soon as practicable after the Closing, and (c) until such Deferred Consent is obtained, Seller Parties, Member Representative and Buyer will cooperate, in all reasonable respects, to provide to Buyer the benefits under the Deferred Item to which such Deferred Consent relates (with Buyer entitled to all the gains and responsible for all the losses, Taxes, liabilities or obligations thereunder). In particular, in the event that any such Deferred Consent is not obtained prior to the Closing, then Buyer and Seller Parties shall enter into such arrangements (including subleasing or subcontracting if permitted, or any such other arrangements as may be necessary prior to novation of any Seller Contracts of which the government is a party) to provide to the parties hereto the economic and operational equivalent of obtaining such Deferred Consent and assigning or transferring such contract, lease, authorization, license or Governmental Authorization, including enforcement for the benefit of Buyer of all claims or rights arising thereunder, and the performance by Buyer of the obligations thereunder on a prompt and punctual basis.

Section 2.9 Restrictive Legends.

(a) The Aggregate Share Consideration shall not have been registered and shall be characterized as “restricted securities” under the U.S. federal securities laws, and under such laws such shares may be resold without registration under the Securities Act only in certain limited circumstances. Each certificate evidencing the Aggregate Share Consideration shall bear a restrictive legend in substantially the following form:

“THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION WITHOUT AN EXEMPTION UNDER THE SECURITIES ACT OR AN OPINION OF LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.”

and any legends required by state securities laws.

(b) Each Share Consideration Recipient shall agree pursuant to the Investor Representation Statement that it, he or she shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale (collectively, the “Restricted Transactions”), any of the Aggregate Share Consideration until or unless such Aggregate Share Consideration is registered or eligible for sale pursuant to the exemption from registration set forth in Rule 144 promulgated under the Securities Act (the “Restricted Period”). Buyer may impose stop-transfer instructions and may stamp each certificate representing the Aggregate Share Consideration with the following legend:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFERABILITY AND RESALE, AS SET FORTH IN SECTION 2.9(b) OF THAT CERTAIN ASSET PURCHASE AGREEMENT DATED AS OF NOVEMBER 14, 2016 BY AND AMONG SYSOREX GLOBAL (THE “COMPANY”), SYSOREX GOVERNMENT SERVICES, INC., INTEGRIO TECHNOLOGIES, LLC AND EMTEC FEDERAL, LLC, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY. SUCH TRANSFER RESTRICTIONS MAY PREVENT TRANSFER OF THESE SHARES AND MAY BE BINDING ON ALL TRANSFEREES OF THESE SHARES.”

Section 2.10 Sale of Shares Pursuant to Exemption The parties hereto acknowledge and agree that the Aggregate Share Consideration shall constitute “restricted securities” within the meaning of the Securities Act. Seller will cause each Share Consideration Recipient to execute and deliver to Buyer and Parent an Investor Representation Statement in the form attached hereto as Exhibit D (the “Investor Representation Statement”). It is acknowledged and understood that Buyer and Parent are relying on the written representations made by each of the Share Consideration Recipients in the Investor Representation Statements.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES**

Except as set forth in the Disclosure Letter, Seller Parties, jointly and severally, represent and warrant to Buyer and Parent as follows:

Section 3.1 Organization and Good Standing. Schedule 3.1 contains a complete and accurate list of Seller Parties’ jurisdictions of formation and any other jurisdictions in which they are qualified to do business as foreign limited liability companies. Seller Parties are limited liability companies duly organized, validly existing and in good standing under the laws of their respective jurisdictions of formation, with full power and authority to conduct their respective businesses as they are now being conducted, to own or use the properties and assets that they purport to own or use, and to perform all their respective obligations under the Seller Contracts. Seller Parties are duly qualified to do business as foreign limited liability companies and in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used therewith, or the nature of the activities conducted thereby, requires such qualification; except where the failure to be so qualified or in good standing in such jurisdiction would not reasonably be expected to have a Material Adverse Effect on Seller.

Section 3.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms. Upon the execution and delivery by Seller Parties of each agreement and certificate to be executed or delivered by Seller Parties at the Closing pursuant to Section 2.7(a) (the "Seller Closing Documents"), each of the Seller Closing Documents will constitute the legal, valid and binding obligation of Seller Parties, enforceable against it in accordance with its terms. Seller Parties each have the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Seller Closing Documents and to perform their respective obligations under this Agreement and the Seller Closing Documents, and such action has been duly authorized by all necessary action by the Seller Members, board of managers of Seller, members of Seller Sub and board of managers of Seller Sub.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), (i) breach any provision of any of the Governing Documents of Seller Parties or any resolution adopted by the boards of managers of Seller Parties or the Seller Members or members of Seller Sub; (ii) breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement or any Order to which Seller, or any of the Assets, may be subject; (iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Seller Parties or that otherwise relates to the Assets or to the Business; (iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract; (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets; or (vi) result in any Seller Member having the right to exercise dissenters' appraisal rights.

(c) Except as set forth on Schedule 2.7(a), neither Seller nor Seller Sub is required to obtain any Consent from or give notice to any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

Section 3.3 Capitalization. The authorized equity securities of Seller Parties are as set forth on Schedule 3.3. Seller as the sole member of Seller Sub is the only Person entitled to vote on the Contemplated Transactions for the Seller Parties. The Seller Members are not entitled to vote on the Contemplated Transactions. Schedule 3.3 sets forth (i) a list of all of the Seller Members indicating the number and class of shares of Seller held by each and, to the best of Seller's Knowledge, the current primary residence address of each, and (ii) a list of all outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any equity securities of Seller, or contracts, commitments, understandings or arrangements by which Seller is or may become bound to issue equity securities of Seller. None of the outstanding equity securities of Seller Parties was issued in violation of the Securities Act or any other Legal Requirement in a manner that could reasonably be determined to give rise to a right of rescission on the part any holder of such equity securities.

Section 3.4 Financial Records. Seller Parties have delivered to Buyer such financial Records, including banking statements and Tax Returns, as has been requested by Buyer (collectively, the “Financial Records”). The financial data contained in such Financial Records is true and correct in all material respects as at the respective dates of and for the periods referred to in such Financial Records, subject in all events to Section 3.17.

Section 3.5 Books and Records. The books of account and other Financial Records of Seller Parties relating to the Business, all of which have been made available to Buyer, are complete and correct in all material respects, and represent actual, bona fide transactions and have been maintained in accordance with sound business practices. The minute books of Seller Parties, to the extent they exist, all of which have been made available to Buyer to the extent they relate to the Business, contain accurate and complete Records of all meetings held of, and corporate action taken by, the members and the boards of managers of Seller Parties, and no meeting relating to the Business of any such members, board of managers or committee has been held for which minutes have not been prepared or are not contained in such minute books.

Section 3.6 Sufficiency of Assets. Except as set forth in Schedule 3.6, the Assets include all the operating assets of the Business.

Section 3.7 Real Property. Schedule 3.7 contains a correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which Seller Parties have a leasehold interest and an accurate description (by location, name of lessor, date of Lease and term expiry date) of all Real Property Leases for which the Business is presently reliant. Neither Seller nor Seller Sub has any ownership interest in any Real Property.

Section 3.8 Title To Assets: Encumbrances. Seller Parties own good and transferable title to all the Assets free and clear of any Encumbrances other than (a) those described in Schedule 3.8, (b) those for Taxes not yet due and payable, (c) statutory Encumbrances of landlords with respect to Real Property Leases, (d) Encumbrances of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the Ordinary Course of Business and not yet delinquent, and (e) in the case of Real Property Leases, in addition to items (b) and (c), zoning, building, or other restrictions, variances, covenants, rights of way, encumbrances, easements and other minor irregularities in title, none of which, individually or in the aggregate, interfere in any material respect with the present use of or occupancy of the affected parcel by Seller Parties (collectively, “Permitted Encumbrances”).

Section 3.9 Condition of Tangible Personal Property. Each item of Tangible Personal Property included in the Assets is in good repair and good operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course of Business and, to the Knowledge of Seller Parties, is free from latent and patent defects. No item of Tangible Personal Property included in the Assets is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed in Schedule 3.9, all Tangible Personal Property used in the Business and included in the Assets is in the possession of Seller Parties.

Section 3.10 Outstanding Liabilities.

(a) Schedule 3.10(a) is a true and complete list of all Accounts Payable of the Seller Parties as of the Closing Date, including a description of the terms of payment, the name and address of the trade creditor and whether such indebtedness is secured.

(b) Schedule 3.10(b) is a true and complete list of all outstanding obligations of the Seller Parties relating to Debt, as of the Closing Date, including the amounts outstanding thereunder, a description of the terms of payment, the name and address of the creditor and whether such indebtedness is secured.



(c) Except as set forth on the Latest Balance Sheet, Schedule 3.10(a) or Schedule 3.10(b), there are no other Liabilities arising out of or related to the Business or Assets of any kind whatsoever.

Section 3.11 Accounts Receivable. Schedule 3.11 sets forth all outstanding Accounts Receivable as of the date of the Closing Date, identified by the applicable Seller Party, with a range of days elapsed since the invoice date for each such Account Receivable, and the aggregate amount of reserves or allowances for doubtful accounts in the aggregate. All such Accounts Receivable are bona fide, arose in the Ordinary Course of Business and are collectible in the book amounts thereof, less the allowance for doubtful accounts and returns which are adequate. All such Accounts Receivable have been recorded in accordance with Seller Parties' GAAP as reflected in the Financial Statements. Except as set forth on Schedule 3.11, none of such Accounts Receivable is subject to any material claim of offset or recoupment or counterclaim, subject to allowances and accruals for bad debt as reflected in the Financial Statements, and the Seller Parties have no knowledge of any specific facts that would reasonably be expected to give rise to any such claim. Except as set forth on Schedule 3.11, no material amount of such Accounts Receivable is contingent upon the performance by a Seller Party of any obligation which will not have been performed in a satisfactory manner by such Seller Party prior to the Closing Date. No written request or agreement for deduction or discount has been made with respect to any of such Accounts Receivable.

Section 3.12 Tax Returns Filed and Taxes Paid. Seller Parties have filed or caused to be filed on a timely basis all Tax Returns. All Tax Returns filed by Seller Parties are true, correct and complete. Seller Parties have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller Parties, except such Taxes, if any, as are listed in Schedule 3.12 and are being contested in good faith. Except as provided in Schedule 3.12, Seller Parties currently are not the beneficiaries of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where Seller Parties do not file Tax Returns that they are or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller Parties have no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance. All Taxes that Seller Parties are or were required to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been remitted to the proper Governmental Body or other Person. Seller Parties have disclosed on their federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal Income Tax within the meaning of Code section 6662. The charges, accruals and reserves with respect to Taxes on the Records of Seller Parties are adequate (determined in accordance with GAAP) and are at least equal to Seller Parties' liabilities for Taxes. Schedule 3.12 sets forth the basis of Seller Parties in their respective assets as of the most recent practicable date.

Section 3.13 Subsidiaries. Set forth in Schedule 3.13 is a complete and correct list of all entities in which Seller Parties own, beneficially or of record, any capital stock or other equity interest in any corporation, limited liability company, partnership, joint venture or other business association of any kind whatsoever.

Section 3.14 Employee Benefits.

(a) Set forth in Schedule 3.14(a) is a complete and correct list of all Employee Plans that (i) are maintained, administered or contributed to by Seller Parties or has been maintained, administered or contributed to in the last six (6) years by Seller Parties, or with respect to which Seller Parties have or may have any liability, and (ii) provides benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of Seller, or the dependents of any thereof, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof. Except as disclosed in Schedule 3.14(a), neither Seller nor Seller Sub has ever maintained, administered or contributed to an Employee Plan that is (w) a "Defined Benefit Plan" (as defined in Section 414(j) of the Code); (x) a plan intended to meet the requirements of Section 401(a) of the Code; (y) a "Multiemployer Plan" (as defined in Section 3(37) of ERISA); or (z) a plan subject to Title IV of ERISA or the minimum funding requirements of Section 412 of the Code. There has never been any other corporation or trade or business controlled by, controlling under common control with or in the same controlled group with Seller Parties (within the meaning of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA).

(b) Seller Parties have delivered to Buyer true, accurate and complete copies of (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Seller or Seller Sub); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the U.S. Department of Labor, or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; (iv) the most recent actuarial and financial reports (audited and/or unaudited) and the annual reports filed with any Government Body with respect to the Employee Plans during the current year and each of the six preceding years; (v) all collective bargaining agreements pursuant to which contributions to any Employee Plan(s) have been made or obligations incurred (including both pension and welfare benefits) by Seller or Seller Sub, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities; (vi) all securities registration statements filed with respect to any Employee Plan; (vii) all contracts and insurance policies with insurance companies, third-party administrators, actuaries, investment managers, consultants and other independent contractors that relate to any Employee Plan; (viii) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans; (ix) a sample of all current administrative forms for each Employee Plan; and (x) the most recent nondiscrimination test reports with respect to the Employee Plans for each of the six preceding years.

(c) Except as disclosed in Schedule 3.14(c), full payment has been made of all amounts that are required under the terms of each Employee Plan to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Employee Plan ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date.

(d) The form of all Employee Plans is in compliance, in all material respects with the applicable terms of ERISA, the Code, and any other applicable Legal Requirement, including the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance in all material respects with such Legal Requirements and the written Employee Plan documents. Neither Seller nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA. All required reports and descriptions of the Employee Plans (including Internal Revenue Service Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions and Summaries of Material Modifications) have been (when required) timely filed with the IRS, the U.S. Department of Labor or other Governmental Body and distributed as required, and all notices required by ERISA or the Code or any other Legal Requirement with respect to the Employee Plans have been appropriately given.

(e) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and Seller Parties have no Knowledge of any circumstances that will or could result in revocation of any such favorable determination letter.

(f) There is no material pending or, to the Knowledge of Seller Parties, threatened Proceeding relating to any Employee Plan, nor is there any basis for any such Proceeding. Neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject Seller Parties or Buyer to a Tax or penalty imposed by the Code or ERISA or a violation of Section 406 of ERISA. The Contemplated Transactions will not result in the potential assessment of a Tax or penalty under the Code or ERISA nor result in a violation of Section 406 of ERISA.

(g) Seller Parties have maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise except as disclosed to Buyer on Schedule 3.14(g).

(h) Except as required by Legal Requirements: (x) the consummation of the Contemplated Transactions will not accelerate the time of vesting or the time of payment, or increase the amount, of compensation or benefits due to any director, employee, officer, former employee or former officer of Seller Parties, and there has been no communication whatsoever of any commitment by Seller Parties to create any new Employee Plan that is not yet effective; and (y) there are no contracts or arrangements providing for payments that could subject any person to liability for tax under Section 4999 of the Code.

(i) Seller Parties have no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are Employee Welfare Benefit Plans.

(j) None of the Contemplated Transactions will result in an amendment, modification or termination of any of the Employee Plans. Except as further described in Schedule 3.14(j), no written or oral representations have been made to any employee or former employee of Seller Parties promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of Seller concerning the employee benefits of Buyer.

(k) No benefit under any Employee Plan has in the past or could give rise in the future to the payment of any amount that would not be deductible pursuant to the current provisions of the Code.

Section 3.15 Compliance With Legal Requirements: Governmental Authorizations.

(a) Seller Parties are, and at all times since their respective inceptions have been, in compliance in all material respects with each Legal Requirement that is or was applicable to it or to the conduct or operation of the Business or the ownership or use of any of the Assets except where the failure to comply would not reasonably be expected to have a Material Adverse Effect on Seller Parties.

(b) No event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a material violation by Seller Parties of, or a failure on the part of Seller Parties to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Seller Parties to undertake, or to bear all or any portion of the cost of, any remedial action of any nature with respect to any Legal Requirement.

(c) Neither Seller nor Seller Sub has received, at any time since their respective inceptions, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Seller Parties to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(d) Schedule 3.15(d) contains a complete and accurate list of each material Governmental Authorization that is held by Seller Parties or that otherwise relates to the Business or the Assets. Each Governmental Authorization listed or required to be listed in Schedule 3.15(d) is valid and in full force and effect. Seller Parties are, and at all times since their respective inceptions have been, in compliance in all material respects with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 3.15(d). The Governmental Authorizations listed in Schedule 3.15(d) collectively constitute all of the Governmental Authorizations necessary to permit Seller Parties to lawfully conduct and operate the Business in the manner in which it currently conducts and operates the Business and to permit Seller Parties to own and use the Assets in the manner in which it currently owns and uses the Assets except where the failure to comply would not reasonably be expected to have a Material Adverse Effect on Seller Parties. Seller Parties expressly disclaim any representation or warranty that the Governmental Authorizations listed in Schedule 3.15(d) are necessary or sufficient for the lawful conduct and operation of the Business by Buyer from and after the Closing.

Section 3.16 Legal Proceedings: Orders.

(a) Except as set forth in Schedule 3.16(a), there is no pending, and to Seller Parties' Knowledge threatened, Proceeding:

- (i) by or against Seller Parties or any of its subsidiaries that otherwise relates to or may affect the Business, or the Assets; or
- (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated

Transactions.

To Seller Parties' Knowledge, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller Parties have delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 3.16(a). There are no Proceedings listed or required to be listed in Schedule 3.16(a) that could have a Material Adverse Effect on Seller Parties.

(b) Except as set forth in Schedule 3.16(b):

- (i) there is no Order to which Seller Parties, the Business or any of the Assets is subject; and

(ii) To Seller Parties' Knowledge, no officer, director, agent or employee of Seller or any of its subsidiaries is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business.

(c) Except as set forth in Schedule 3.16(c):

(i) Seller Parties are, and, at all times since the respective inceptions have been in compliance in all material respects with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject;

(ii) No event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a material violation of or failure to comply with any term or requirement of any Order to which Seller Parties or any of the Assets is subject; and

(iii) Neither Seller nor Seller Sub has received, at any time since their respective inceptions, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which Seller Parties or any of the Assets is or has been subject.

Section 3.17 Financial Statements: Absence of Certain Changes and Events.

(a) Financial Statements.

(i) Attached to Schedule 3.17(a)(i) are the following unaudited consolidated financial statements of Seller (collectively, the “Annual Financial Statements”):

(A) the balance sheets of Seller as of December 31, 2013, December 31, 2014 and December 31, 2015;

(B) the statements of operations of Seller for the fiscal years December 31, 2013, December 31, 2014 and December 31, 2015; and

(C) the cash flow statements of Seller for the fiscal years December 31, 2013, December 31, 2014 and December 31, 2015.

(ii) Attached to Schedule 3.17(a)(ii) are the following unaudited interim consolidated financial statements of Seller (collectively, the “Interim Financial Statements”):

(A) the unaudited balance sheet (“Latest Balance Sheet”) for Seller as of September 30, 2016 (the “Latest Balance Sheet Date”);

(B) the unaudited statement of operations for the quarterly period ended September 30, 2016; and

(C) the cash flow statement for the quarterly period ended September 30, 2016.

(iii) Each of the Annual Financial Statements and the Interim Financial Statements (collectively, the “Financial Statements”) is consistent with the books and records of Seller and fairly reflects in all material respects the financial condition, results of operations and cash flows of Seller Parties as of the date and for the periods related thereto and have been prepared in accordance with GAAP applied on a consistent basis (except, in the case of the Annual Financial Statements and the Interim Financial Statements for the absence of footnote disclosure and, in the case of the Interim Financial Statements, for normal and immaterial year-end adjustments) throughout the periods covered thereby. The Seller Cash On Hand is approximately \$100,000 and the Synnex Cash is approximately \$700,000 (the actual numbers for which will be provided by Seller to Buyer at Closing and shall not change in a material amount).

(b) Absence of Certain Changes and Events. Other than actions taken in furtherance of the sale of its assets or other business combination transaction involving it, since the Latest Balance Sheet Date, Seller Parties have conducted the Business only in the Ordinary Course of Business. Since the Latest Balance Sheet Date, there has not been any event, whether individually or in the aggregate, which could reasonably be expected to have a Material Adverse Effect on Seller Parties. Since the Latest Balance Sheet Date, there has not been (i) any sale, lease or other disposition of any asset or property of Seller Parties necessary to operate the Business (including the Intellectual Property Assets) or the creation of any Encumbrance on any of the Assets (except for Permitted Encumbrances), (ii) any indication by any customer or supplier of an intention to prematurely discontinue or change the terms of its relationship with Seller Parties; (iii) any entry into, termination of or receipt of notice of termination of any license, distributorship, dealer, sales representative, joint venture, credit or similar Contract relating to the Business; and (iv) any damage to or destruction or loss of any Asset, whether or not covered by insurance.

Section 3.18 Contracts; No Defaults.

(a) Except as set forth in Schedule 3.18(a), each Assumed Seller Contract listed in Schedule 2.1(b) is in full force and effect, is valid and enforceable in accordance with its terms, is assignable by Seller Parties to Buyer without the consent of any other Person, and, to the Knowledge of Seller, will upon completion or performance thereof not have a Material Adverse Effect on the Business or Assets and there are no amendments, purchase orders or other understanding or arrangements related to any such Assumed Seller Contract that in any way alters, amends, nullifies or otherwise impedes the effectiveness of such Assumed Seller Contract; provided, however, that certain Assumed Seller Contracts as described on Schedule 3.18(a) are subject to novation in accordance with the Federal Acquisitions Regulation and certain state government procurement laws and regulations, and pursuant to Section 5.15, in order to substitute Buyer for Seller Parties such Assumed Seller Contracts are subject to novation, as identified in Schedule 3.18(a). Seller Parties each represent that they will cooperate, in all reasonable respects, to obtain any required consent to permit the transfer of each government Seller Contract to Buyer as soon as practicable after the Closing without payment of further consideration therefor and in the preparation, filing and processing of any and all novation requirements; provided that the Seller Parties shall not be required to make any payments or agree to any material undertakings in connection therewith. During the novation process, the Seller Parties will cooperate, in all reasonable respects, to provide to Buyer the benefits under each Assumed Seller Contract that is subject to novation (with Buyer entitled to all the gains and responsible for all the losses, taxes, liabilities and/or obligations thereunder, but only to the extent such losses, taxes, liabilities and/or obligations are not attributable to the Seller Parties and their respective affiliates) and to grant to Buyer the right to service any Assumed Seller Contract in the place and stead of the Seller Parties as a sub-contractor as further described in Section 5.15.

(b) Except as set forth in Schedule 3.18(b):

(i) Seller Parties are, and at all times have been, in compliance in all material respects with all applicable terms and requirements of each Seller Contract which is being assumed by Buyer.

(ii) to Seller Parties' Knowledge, each other Person that has or had any obligation or liability under any Seller Contract which is being assigned to Buyer is, and at all times has been, in compliance in all material respects with all applicable terms and requirements of such Seller Contract;

(iii) to Seller Parties' Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give Seller Parties or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract that is being assigned to or assumed by Buyer; and

(iv) to Seller Parties' Knowledge no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets.

(c) Seller Parties each represent and warrant that it is not aware of and has not received from any contracting party any notice of default or other notification alleging the deficiency of its performance under any contract listed in Schedules 2.1 or 3.18(a).

(d) Seller Parties have each complied with all clauses, provisions and requirements of any government Contract or government Contract bid, including all provisions regarding assignment or change of control as well as cost accounting, invoicing and procurement processes.

(e) All government Contracts and government Contract bids have complied with all applicable statutory and regulatory requirements during the relevant period, including some or all of the following:

- Federal Acquisition Act;
- Service Contract Act;
- Truth in Negotiations Act;
- Fair Labor Standards Act;
- Procurement Integrity Act;
- False Claims Act;
- Buy American; and
- Trade Agreements Act.

(f) Neither Seller nor Seller Sub has received notice of termination for convenience, notice of termination for default, cure notice, or show-cause notice pertaining to any government Contract or government Contract bid.

(g) Neither Seller nor Seller Sub is subject to litigation for false claims, claims for price adjustment or other requests for price reductions based on actual or alleged defective pricing.

(h) All national security clearances held by Seller Parties and/or any employee are set forth on Schedule 3.18(h) and Seller Parties and/or any individual who holds a security clearance is complying with all national security obligations.

(i) There are no current or threatened disputes between Seller Parties and any governmental authority with respect to any government Contract, including fraud, violation of antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(j) There is no administrative, civil or criminal investigation, internal investigation, or mandatory or voluntary disclosure currently pending nor filed in the three (3) years prior to Closing with respect to any alleged irregularity, noncompliance, violation of law, misstatement or omission relating to any government Contract or government Contract bid.

(k) Neither Seller nor Seller Sub possesses any government-furnished property, equipment or material.

(l) Neither Seller nor Seller Sub is aware of any facts or circumstances which mandate a disclosure under any federal or state law.

Section 3.19 Insurance.

(a) To the extent such items exist and pertain to the Assets or Assumed Liabilities, Seller Parties have delivered to Buyer (i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder), including pending applications, to which Seller Parties are a party or under which Seller Parties are or have been covered at any time since their inception, (ii) a description of any self-insurance arrangements, (iii) a list of any reserves for losses, (iv) accurate and complete copies of any contracts involving a transfer of the risk of loss, (v) accurate and complete copies of any obligations of Seller Parties to insure Third Parties, and (vi) a summary of all loss experiences and claims made under any of the foregoing, a list of which is included in Schedule 3.19(a).

(b) All policies of insurance as described in Section 3.19(a)(i) are (i) valid, outstanding and enforceable, and (ii) to Seller Parties' Knowledge, issued by an insurer that is financially sound and reputable.

Section 3.20 Environmental Matters. Seller Parties are, and at all times have been, in compliance in all material respects with, and has not been and is not in violation of or liable under, any Environmental Law. Seller Parties do not have any basis to expect, nor has it or any other Person for whose conduct it is or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any location where Seller Parties currently or previously has conducted its business, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities.

Section 3.21 Employees.

(a) Seller Parties have made available to Buyer a complete and accurate list of the following information for each employee of Seller Parties that is engaged in the Business, including each employee on leave of absence or layoff status and each consultant or independent contractor that has provided services to Seller Parties that are material to the Business or the development of the technology of the Business: employer; name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since December 31, 2013; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan.



(b) No officer, director, agent, employee, consultant, or contractor of Seller Parties that was or is engaged in the Business is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the Business, or (ii) to assign to Seller Parties or to any other Person any rights to any invention, improvement, or discovery. No former or current employee, consultant or contractor of Seller Parties is a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of Seller Parties or Buyer to conduct the Business as heretofore carried on by Seller Parties.

Section 3.22 Labor Disputes; Compliance.

(a) Seller Parties have complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other employment practices, the payment of social security and similar Taxes and occupational safety and health. Seller Parties are not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as disclosed in Schedule 3.22(b), (i) Seller Parties have not been, and are not now, a party to any collective bargaining agreement or other labor contract; (ii) since December 31, 2013, there has not been, there is not presently pending or existing, there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller Parties; (iii) no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Seller Parties' Knowledge, threatened against or affecting Seller Parties any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Seller Parties; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding with respect to any Legal Requirements described in Section 3.22(a) exists that might have an adverse effect upon Seller Parties or the conduct of the Business; (vii) there is no lockout of any employees by Seller Parties, and no such action is contemplated by Seller Parties; and (viii) there has been no charge of discrimination filed against or threatened against Seller Parties with the Equal Employment Opportunity Commission or similar Governmental Body.

Section 3.23 Intellectual Property Assets.

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Seller Parties in which Seller Parties have a proprietary interest, and which, whether directly or indirectly, are related to, used in connection with, or are or will form a part of the Business, including, but not limited to:

(i) Seller Parties' names, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks");

(ii) all patents and patent applications, and any continuation, divisional, renewal, substitute or reissue thereof, or any legal equivalent thereof in a foreign country, and all inventions and discoveries that may be patentable in the United States or any foreign country (collectively, "Patents");

(iii) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights");

- (iv) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and
  - (v) all rights in internet web sites and internet domain names presently registered to Seller Parties (collectively "Domain Names").
- (b) Schedule 3.23(b) contains a complete and accurate list, and Seller Parties have delivered to Buyer accurate and complete copies, of all Seller Contracts relating to the Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs under which a Seller Party is the licensee. There are no outstanding and no threatened disputes or disagreements with respect to any such Contract.
- (c) (i) Except as set forth in Schedule 3.23(c), the Intellectual Property Assets are all those necessary for the operation of the Business as it is currently conducted. Seller Parties are the owners or licensees of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Schedule 3.23(c).
- (ii) Except as set forth in Schedule 3.23(c), all former employees of Seller Parties since their inception, and all current employees of Seller Parties have executed written Contracts with Seller Parties that assign to Seller Parties all rights to any inventions, improvements, discoveries or information relating to the Business.
- (d) Seller Parties have no Patents.
- (e) Seller Parties have no registered Marks.
- (i) No Mark is infringed or, to Seller Parties' Knowledge, has been challenged or threatened in any way. None of the Marks used by Seller Parties infringes or is alleged to infringe any trade name, trademark or service mark of any other Person.
- (f) Seller Parties have no registered Copyrights.
- (g) (i) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.
- (ii) Seller Parties have taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by Seller Parties of a policy requiring each employee or contractor to execute proprietary information and confidentiality agreements substantially in Seller Parties' standard form, and all current and former employees and contractors of Seller Parties have executed such an agreement).
- (iii) Seller Parties have good title to and an absolute right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature and, to Seller Parties' Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than a Seller Party) or to the detriment of Seller Parties. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

(h) (i) Schedule 3.23(h) contains a complete and accurate list of all Domain Names.

(ii) All Domain Names have been registered in the names of Seller Parties and are in compliance in all material respects with all formal Legal Requirements.

(iii) No Domain Name has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and, to Seller Parties' Knowledge, no such action is threatened with respect to any Domain Name.

(iv) To Seller Parties' Knowledge, no Domain Name is infringed or, to Seller Parties' Knowledge, has been challenged, interfered with or threatened in any way. No Domain Name infringes, interferes with or, to Seller Parties' Knowledge, is alleged to interfere with or infringe the trademark, copyright or domain name of any other Person.

Section 3.24 Compliance With the Foreign Corrupt Practices Act and Export Control and Antiboycott Laws Seller Parties and their respective Representatives, have at all times acted in compliance with the Foreign Corrupt Practices Act. Seller Parties have at all times been in compliance with all Legal Requirements relating to export control and trade embargoes. Seller Parties have not violated the antiboycott prohibitions contained in 50 U.S.C. §2401 et seq. or taken any action that can be penalized under Section 999 of the Code.

Section 3.25 Brokers or Finders. Neither the Seller Parties, nor to Seller Parties' Knowledge any of their respective Representatives, have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of the Business, the Assets or the Contemplated Transactions.

Section 3.26 Relationship with Related Persons. Except as disclosed in Schedule 3.26, no Related Person of Seller Parties has, or since such Seller Party's inception has had, any ownership interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to the Business, other than as an owner of Seller's equity securities. Neither Seller Parties nor any Related Person of Seller Parties owns, or since such Seller Party's inception has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (a) had business dealings or a material financial interest in any transaction with Seller Parties other than business dealings or transactions disclosed in Schedule 3.26, each of which has been conducted in the Ordinary Course of Business with Seller Parties at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in competition with Seller Parties with respect to any line of the products or services of Seller Parties (a "Competing Business") in any market presently served by Seller Parties, except for ownership of less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 3.26, no Related Person of Seller Parties is a party to any Contract with, or has any claim or right against, Seller Parties.

Section 3.27 Bulk Sales. The transfer of the Assets as contemplated by this Agreement shall not require compliance with any statutory provisions relating to the transfer of goods in bulk under the laws of all States in which such Assets are located, including the Uniform Commercial Code in effect in such State.

Section 3.28 Solvency. Neither of the Seller Parties is insolvent on the date hereof and will not be rendered insolvent by any of the transactions contemplated by this Agreement. For purposes hereof, "Insolvent" means, with respect to any Person, that sum of the outstanding Liabilities of such Person exceeds the present fair saleable value of such Person's assets. On or prior to the Closing, except as set forth on Schedule 3.28, all outstanding Liabilities of the Seller Parties that have not been assumed by the Buyer in accordance with this Agreement will have been paid in full or terminated by the holder of each such Liability.

Section 3.29 Debarment. Neither Seller Parties nor any of their respective officers, managers or other principals are or have been in the previous three (3) years from Closing suspended, debarred or proposed for debarment by any federal or state agency.

Section 3.30 No Disqualification Events. Neither the Seller Parties, nor any of their respective predecessors, any affiliated issuer, any manager, director, executive officer, other officer of a Seller Party, any beneficial owner of 20% or more of a Seller Party's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with a Seller Party in any capacity at the time of sale (each, a "Covered Person" and, together, "Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Seller Parties have exercised reasonable care to determine whether any Covered Person is subject to a Disqualification Event. The Seller Parties have complied, to the extent applicable, with their respective disclosure obligations under Rule 506(e), and have furnished to Buyer a copy of any disclosures provided thereunder.

Section 3.31 Satisfaction of Liabilities. Seller Parties acknowledge and agree that no portion of the Cash Consideration or the Aggregate Share Consideration shall be delivered to any Seller Member or other affiliate of the Seller Parties prior to satisfaction of any outstanding obligations due to creditors of Seller.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF BUYER AND PARENT**

Buyer and Parent, jointly and severally, represent and warrant to Seller Parties as follows:

Section 4.1 Organization and Good Standing. Buyer and Parent are corporations duly organized, validly existing and in good standing under the laws of the State of Virginia and Nevada, respectively, each with full corporate power and authority to conduct its business as it is now conducted.

Section 4.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer and Parent, enforceable against Buyer and Parent in accordance with its terms. Upon the execution and delivery by Buyer or Parent of each agreement and certificate to be executed or delivered by Buyer or Parent at Closing pursuant to Section 2.7(b) (the "Buyer's Closing Documents"), each of Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer and/or Parent, as applicable, enforceable against Buyer or Parent, as the case may be, in accordance with its respective terms. Buyer and Parent have the absolute and unrestricted right, power and authority to execute and deliver this Agreement and Buyer's Closing Documents and to perform its obligations under this Agreement and Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by Buyer and Parent nor the consummation or performance of any of the Contemplated Transactions by Buyer and Parent will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to (i) any provision of the applicable Governing Documents; (ii) any resolution adopted by the board of directors or the stockholders of Buyer or Parent; (iii) any Legal Requirement or Order to which Buyer or Parent may be subject; or (iv) any Contract to which Buyer or Parent is a party or by which Buyer or Parent may be bound. Neither Buyer nor Parent is or will be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

Section 4.3 SEC Reports and Filings; Parent Offering Materials. Parent's (i) Annual Report on Form 10-K for the fiscal year ended December 31, 2015, filed with the SEC on March 30, 2016, as amended on April 29, 2016, (ii) Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2016, filed with the SEC on August 15, 2016, and (iii) Current Reports on Form 8-K filed with the SEC since June 30, 2016 (all of the foregoing documents, collectively, the "SEC Documents"), including the financial statements contained therein, complied with all material applicable Legal Requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations promulgated by the SEC thereunder. The Parent Offering Materials, if required pursuant to Section 2.7(d) hereof, constitute the information required to be delivered to non-accredited investors pursuant to Rule 502 of Regulation D in order for Parent's issuance of the Aggregate Share Consideration to the Share Consideration Recipients to be exempt from registration pursuant to Rule 506 of Regulation D, assuming the truth and accuracy of the Investor Representation Statements executed by the Share Consideration Recipients.

Section 4.4 Certain Proceedings. There is no pending Proceeding that has been commenced against Buyer or Parent that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, this Agreement or any of the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

Section 4.5 No Reliance. Buyer and Parent acknowledge that in making the decision to enter into this Agreement and to consummate the transactions contemplated hereby, other than reliance on the representations, warranties, covenants and obligations of Seller explicitly set forth in this Agreement, Buyer and Parent have relied solely upon their (and their Representatives') independent investigation, analysis and evaluation of Seller and of the Contemplated Transactions contemplated by this Agreement (including its own estimate and appraisal of the value of the Company and its financial conditions, assets, operations, and prospects). Buyer confirms to Seller that (a) Buyer, Parent and their Representatives have had full opportunity to discuss, ask questions, and obtain data regarding the Company, this Agreement, and the transactions contemplated hereby of and with Seller and its Representatives, and (b) Buyer and Parent are sophisticated, knowledgeable, and capable of evaluating the matters set forth above.

Section 4.6 Capital Stock. The Aggregate Share Consideration to be issued by Parent pursuant to this Agreement, when issued in accordance with this Agreement, will be duly authorized, validly issued, fully paid and nonassessable, and free and clear from any Encumbrance in respect of the issuance thereof, except as provided in this Agreement and except for Encumbrances created by or imposed upon the holder of such shares. Such Aggregate Share Consideration will not be subject to any preemptive rights or other restrictions, except as provided in this Agreement, or under federal and applicable state securities laws. Assuming the representations and warranties of each Share Consideration Recipient in his, her or its Investor Representation Statement are true and correct, the Aggregate Share Consideration and any other shares of common stock of Parent issuable pursuant to this Agreement will be issued in compliance with applicable federal or state securities laws.

Section 4.7 Compliance With Legal Requirements; Governmental Authorizations.

(a) Buyer and Parent are, and at all times since their respective inceptions have been, in compliance in all material respects with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of the Aggregate Shares except where the failure to comply would not reasonably be expected to have a Material Adverse Effect on Buyer.

(b) No event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a material violation by Buyer or Parent of, or a failure on the part of Buyer or Parent to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Buyer or Parent to undertake, or to bear all or any portion of the cost of, any remedial action of any nature with respect to any Legal Requirement.

(c) Neither Buyer or Parent has received, at any time since their respective inceptions, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Buyer or Parent to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

Section 4.8 Tax Returns Filed and Taxes Paid. Buyer and Parent have filed or caused to be filed on a timely basis all Tax Returns. All Tax Returns filed by Buyer and Parent are true, correct and complete. Buyer and Parent have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, as are listed in Schedule 4.8 and are being contested in good faith. Except as provided in Schedule 4.8, Buyer and Parent currently are not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where Buyer or Parent does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Aggregate Shares that arose in connection with any failure (or alleged failure) to pay any Tax, and Buyer and Parent have no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance. All Taxes that Buyer and Parent are or was required to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been remitted to the proper Governmental Body or other Person. Buyer and Parent have disclosed on its federal income Tax Return all positions taken therein that could give rise to a substantial understatement of federal Income Tax within the meaning of Code section 6662. The charges, accruals and reserves with respect to Taxes on the Records of Buyer and Parent are adequate (determined in accordance with GAAP) and are at least equal to Seller's liability for Taxes.

Section 4.9 Compliance With the Foreign Corrupt Practices Act and Export Control and Antiboycott Laws Buyer and Parent, and to their Knowledge their Representatives, have at all times acted in compliance with the Foreign Corrupt Practices Act. Buyer and Parent at all times been in compliance with all Legal Requirements relating to export control and trade embargoes. Buyer and Parent not violated the antiboycott prohibitions contained in 50 U.S.C. §2401 et seq. or taken any action that can be penalized under Section 999 of the Code.

Section 4.10 Operation of Business in Good Faith. Buyer and Parent will operate the Business after Closing in good faith and in the Ordinary Course of Business without taking any actions intended or designed to depress the Earnout Payments. In the event of a sale, merger, consolidation, acquisition or dissolution of Buyer or Parent, the Earnout Payments shall be accelerated and paid in full to Seller upon the closing of such transaction.

## ARTICLE V ADDITIONAL COVENANTS

### Section 5.1 Employees and Employee Benefits.

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees or consultants employed on the Closing Date by Seller Parties for the Business who are employed exclusively in the Business as then conducted, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Not later than the Closing Date, Buyer shall offer employment or consultancy to the Active Employees of Seller Parties listed on Schedule 5.1(b) at the compensation rates set forth on Schedule 5.1(b) and with such benefits, if any, as specified on Schedule 5.1(b) (any such employees or consultants who accept such offer of employment or consultancy being referred to as the "Hired Active Employees"). Buyer shall have no obligation to offer employment to any employees whose employment had been terminated (voluntarily or involuntarily) or who have retired prior to the Closing Date.

(ii) For a period of one (1) year from the Closing Date, neither Seller Parties nor any of their respective Related Persons shall directly solicit the continued employment of any Hired Active Employee; provided, however, that this restriction shall not apply to a Hired Active Employee's response to a general solicitation or advertisement for employment, or if Buyer or Parent does not assume such Hired Active Employee's salary.

(iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment or consultancy relationship of any fixed term or duration or upon any terms or conditions other than those set forth in this Section and the NDAs, and (B) employment or consultancy offered by Buyer may be terminated by Buyer at any time for any reason (subject to any written commitments to the contrary made by Buyer or Hired Employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment or consultancy of such Hired Active Employees.

(c) Salaries and Benefits.

(i) Seller Parties shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller Parties through the close of business on the Closing Date, including pro rata bonus payments and all vacation pay earned prior to the Closing Date, if any, except with respect to any Hired Active Employees, for whom Buyer will assume vacation and offer vacation accrual as of the Closing Date and Seller Parties will not be responsible for such payment(s); and (B) the payment of any termination or severance payments if such employee is not a Hired Active Employee, provided that all Hired Active Employees shall waive in writing any and all termination or severance payments that would otherwise result from the termination of their employment by Seller Parties.

(ii) Seller Parties shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Plans. For purposes of the immediately preceding sentence, a charge will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) No Transfer of Assets. Neither Seller Parties nor their respective Related Persons will make any transfer of pension or other employee benefit plan assets to Buyer.

(e) Terms of Employment. Subject to the provisions of Section 5.1(b)(i), Buyer will set its own initial terms and conditions of employment and consultancy for the Hired Active Employees and others it may hire, including work rules, and future wage structure, all as permitted by law. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Seller Parties shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Closing, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer.

(f) General Employee Provisions.

(i) Seller Parties and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 5.1 as may be necessary to carry out the arrangements described in this Section 5.1.

(ii) Seller Parties and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 5.1.

(iii) If any of the arrangements described in this Section 5.1 are determined by the IRS or other Governmental Body to be prohibited by law, Seller Parties and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

(v) Seller Parties shall assist Buyer in all respects, including but not limited to, coordination with the relevant Governmental Body, to help facilitate the transfer of any security clearances applicable to Hired Active Employee.

Section 5.2 Collection of Accounts Receivable; Seller's Primary Operating Bank Account.

(a) Seller Parties shall use its best efforts with and assist Buyer in connection with the collection of the Accounts Receivable and shall take all actions reasonably requested by Buyer in connection therewith. Following the Closing Date, if Seller receives any payment with respect to the Accounts Receivable it shall deliver such payment to Buyer in the form received within three (3) Business Days after its receipt thereof. Seller Parties shall not have any claims, defenses or rights to set-off with respect to any such payments. Seller Parties shall endorse or deposit any checks or other instruments received in payment of the Accounts Receivable.

(b) In furtherance of Section 5.2(a), Seller Parties, as of the Closing Date, constitute and appoint Buyer and its successors and assigns the agent of Seller Parties in the collection of the Accounts Receivable and the attorney-in-fact of Seller Parties, with full power of substitution, to execute, sign, endorse, or deliver, in the name of Seller Parties, receipts or any other document necessary to evidence, collect, or otherwise realize upon such Accounts Receivable, and to institute and prosecute, in the name of Seller Parties or Buyer but on behalf of, and for the benefit of, Buyer, and at the expense of Buyer, all proceedings and actions that Buyer may deem desirable to collect, assert or enforce any claim, right or title of any kind in and to the Accounts Receivable, and to defend and compromise any and all actions, suits or proceedings that the owner of the Accounts Receivable is entitled to defend or compromise. Seller Parties agree that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller Parties in any manner and for any reason (including the dissolution of Seller Parties). In addition, Seller Parties agree to execute any further power-of-attorney that Buyer deems reasonably necessary or appropriate to give effect to this Section 5.2(b) and for Buyer to evidence, collect, or otherwise realize upon the Accounts Receivable.



(c) Neither of Sections 5.2(a) nor (b) shall apply to any Accounts Receivable assigned to Seller Parties pursuant to Section 2.3(b)(i).

(d) On the Closing Date, Seller will cause one or more designees of Buyer to be granted signing authority on Seller's primary operating bank account at Cardinal Bank. After the Closing, Seller shall give such designee or designees access to and the ability to control deposits and withdrawals from such bank account.

Section 5.3 Payment of Other Retained Liabilities. Seller Parties shall pay, or make adequate provision for the payment, in full of all the Retained Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the Business previously conducted by Seller Parties with the Assets, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the Annual Cash Payments and/or the Earnout Payments on a pro rata basis, as provided in Article VI.

Section 5.4 Reports and Returns. Member Representative shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the Business of Seller as conducted using the Assets, to and including the Closing Date.

Section 5.5 Assistance in Proceedings. Each party will cooperate with the other party and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller, the Business, or the Assets.

Section 5.6 Noncompetition, Nonsolicitation and Nondisparagement.

(a) Noncompetition. For a period of two (2) years after the Closing Date, Seller Parties covenant and agrees that it shall not, anywhere in the United States, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any Person engaged in or planning to become engaged in the businesses of the Business, provided, however, that Seller Parties may acquire up to (but not more than) five percent (5%) of any class of the securities of any Person (but may not otherwise participate in the activities of such Person) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Exchange Act. The geographical area encompassed by this Agreement is due to the nature and scope of Buyer's business offerings. This Section 5.6(a) shall not apply to any Seller Members.

(b) Nonsolicitation. For a period of two (2) years after the Closing Date, Seller Parties covenant and agree that it and the Hired Active Employees shall not, directly or indirectly:

(i) solicit the business of any Person who is a customer of Buyer, except in response to a general solicitation or advertisement in the Ordinary Course of Business;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer to cease doing business with Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller Parties on the Closing Date or within the year preceding the Closing Date to cease doing business with Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer; or

(iv) hire, retain or attempt to hire or retain any employee of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors, except in response to a general solicitation or advertisement in the ordinary course. This Section 5.6(b) shall not apply to any Seller Members.

(c) Nondisparagement. After the Closing Date, Seller Parties will not disparage Buyer or any of Buyer's stockholders, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 5.6 (a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic 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. This Section 5.6 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Section 5.6 is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Seller.

Section 5.7 Customer and Other Business Relationships. After the Closing, Member Representative will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller Parties existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Member Representative will use Best Efforts to satisfy the Retained Liabilities in a manner that is not detrimental to any of such relationships. Member Representative will refer to Buyer all inquiries relating to such business. Neither Member Representative nor any of officers, employees, or agents of Seller Parties shall take any action that would tend to diminish the value of the Assets after the Closing or that would interfere with the business of Buyer to be engaged in after the Closing.

Section 5.8 Retention of and Access to Records. After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices (but for no less than five years) those Records of Seller Parties delivered to Buyer. Buyer also shall provide Member Representative and its Representatives reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements, Tax Returns, or deal with Tax audits. Until such time as Seller Parties are dissolved as a corporate entity or three (3) years following the Closing Date, whichever occurs first, Member Representative shall provide Buyer and its Representatives reasonable access to Records that are related to any of the Excluded Assets, during normal business hours and on at least three (3) days' prior written notice, for any reasonable purpose relating to the Contemplated Transactions, which purpose must be specified by Buyer in such notice.

Section 5.9 Further Assurances. The parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

Section 5.10 Conduct of Business Pending the Closing Date. At all times from the execution of this Agreement until the Closing Date, except as set forth in Schedule 5.10 or as expressly permitted elsewhere in this Agreement, Seller Parties shall conduct the Business in the Ordinary Course of Business and in compliance in all material respects with all applicable Legal Requirements, and use Best Efforts in light of its available cash, to preserve substantially intact the Business and goodwill of its customers and suppliers, keep available the services of its officers and employees and preserve the relationships with those Persons having business dealing with Seller Parties with respect to the Business. Furthermore, except as set forth in Part 5.10 or as expressly permitted elsewhere in this Agreement, each Seller Party agrees not to take any of the following actions without the prior written consent of Buyer:

- (a) amend its Governing Documents;
- (b) (i) issue, deliver, pledge, transfer, dispose of or encumber any membership interests or other equity or voting interests of Seller Parties or any securities convertible into, exchangeable or exercisable for or representing the right to subscribe for, purchase or otherwise receive any such interests or any stock appreciate rights, "phantom" stock rights, performance units, rights to receive membership interests or other rights that are linked to the value of Seller Parties' membership interests or the value of Seller Parties or any part thereof, provided, however, that none of the foregoing shall prohibit the issuance of Seller Parties' membership interests (i) upon the exercise of valid options outstanding as of the date of this Agreement and (ii) in satisfaction of outstanding debt obligations, not to exceed an aggregate of 10,000 units;
  - (ii) effect any split, combination, reclassification, reverse split, dividend, recapitalization or other similar transaction;
- (c) grant, confer or award any option, right, warrant, deferred unit, conversion right or other right not existing on the date hereof to acquire any of its membership interests or deferred interests, restricted interest awards, restricted interest units, appreciation rights, "phantom" awards or other similar rights that are linked to the value of Seller Parties' membership interests or the value of Seller Parties or any part thereof (whether or not pursuant to any existing equity plan of Seller Parties);
- (d) (i) except to the extent required under existing plans or arrangements, increase any compensation or benefit of, or enter into or amend in any material respect any employment or severance agreement with any of Seller Parties' Representatives;
  - (ii) grant any bonuses (including grants of bonuses to new hires) to any of Seller Parties' Representatives;
  - (iii) adopt any new Employee Plan, or amend or modify any existing Employee Plan in any material respect, or accelerate the vesting of any compensation (including equity-based awards) for the benefit of any of Seller Parties' Representatives or grant or amend in any material respect any award under any existing Employee Plans;
  - (iv) provide any funding for any rabbi trust or similar arrangement, or take any other action to fund or secure the payment of any compensation or benefit;

increases therein;

- (v) grant to any of Seller Parties' Representatives any severance, change-in-control, retention, termination or similar compensation or benefits or
- (vi) hire or otherwise employ any individual other than in the Ordinary Course of Business; or
- (vii) terminate any employee other than for cause, including misconduct or breach of Seller Parties policies.

(e) (i) declare, set aside or pay any dividend or make any other distribution or payment (whether in cash, stock or other property or any combination thereof) with respect to any of its membership interests or other equity or voting interests, or

(ii) directly or indirectly adjust, recapitalize, reclassify, combine, split, subdivide, redeem, purchase or otherwise acquire any of its membership interests of, or other equity or voting interest in, Seller Parties, or any options, warrants, calls or rights to acquire any such interests or other securities, other than in connection with Tax withholdings and exercise price settlement upon the exercise of any outstanding options or the conversion of any Seller Parties restricted interest units outstanding on the date of this Agreement;

(f) (i) transfer, sell, lease, sublease, license, sublicense or otherwise dispose of any material assets or properties of Seller Parties related to the Business; or

(ii) mortgage or pledge any of the property or assets of Seller Parties related to the Business, or subject any such property or assets to any other Encumbrance (except Permitted Encumbrances), other than, in the case of both (i) and (ii), in the Ordinary Course of Business;

(g) except in the Ordinary Course of Business, enter into, or amend or terminate any Seller Contract or any lease or sublease; provided that in no event shall Seller enter into any procurement contracts which require or involve payment by Seller Parties, unless approved by the Buyer;

(h) (i) merge with, enter into a consolidation with or otherwise acquire a material portion of the outstanding equity interests in any Person or acquire any portion of the assets or business of any Person (or any division or line of business thereof); or

(ii) otherwise acquire (including, through leases, subleases and licenses of real property) any assets, except, in the case of this clause (ii), in the Ordinary Course of Business; provided that no acquisitions that make it more difficult in any material respect to obtain any approval or authorization required in connection with the Contemplated Transactions hereby under any Legal Requirement or that would reasonably be expected to prevent, delay, or impede consummation of the Contemplated Transactions hereby shall be permitted without consent;

(i) create, incur or assume any indebtedness for borrowed money, assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the indebtedness of another Person, enter into any agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing;

(j) create, incur or assume any Encumbrance affecting the Assets;

- (k) (i) modify, amend, accelerate, terminate or cancel any Seller Contract,  
 Securities Act), or  
 (ii) enter into, amend or modify any agreement or arrangement with Persons that are "affiliates" (as such term is defined in Rule 144 under the Securities Act), or  
 (iii) enter into, extend or renew any contract which, if executed prior to the date of this Agreement, would have been required to be disclosed pursuant to Section 3.18, other than, in each case, in the Ordinary Course of Business;
- (l) enter into, amend or modify any agreement which grants to any Person exclusive supply, manufacturing, production, marketing or distribution rights with respect to any products or technologies related to the Business;
- (m) transfer or license on an exclusive basis to any Person any rights to the Intellectual Property Assets;
- (n) sell, transfer, lease, license, sublicense, mortgage, pledge, encumber, grant or otherwise dispose of any Intellectual Property Assets or amend or modify in any respect any existing material agreements with respect to any Intellectual Property Assets;
- (o) enter into any material agreement with respect to the Intellectual Property Assets or with respect to the intellectual property of any Third Party, other than, in the case of intellectual property of any Third Party, in the Ordinary Course of Business;
- (p) authorize, recommend, propose or announce an intention to adopt a plan of complete or partial liquidation or dissolution of Seller;
- (q) form any subsidiary;
- (r) make any material Tax election or settle or compromise any material Tax Liability, if such election, settlement or compromise would have the effect of increasing the Tax Liability related to the Business for any period;
- (s) materially reduce the amount of any insurance coverage provided by the existing insurance policies of Seller;
- (t) settle, pay or discharge any litigation, investigation, or arbitration, other than the settlement, payment, discharge or satisfaction thereof in the Ordinary Course of Business as long as the amount paid to settle, pay or discharge such litigation, investigation or arbitration does not exceed \$10,000;
- (u) knowingly take or fail to take any action in breach of this Agreement for the purpose of (or which would be reasonably expected to) materially delaying or preventing the Contemplated Transactions (other than as required by Legal Requirements); and
- (v) authorize any of, or commit, resolve, offer, agree or announce an intention to take any of, the foregoing actions or any other action inconsistent with the foregoing.

Notwithstanding the foregoing, nothing contained in this Agreement shall give to Buyer, directly or indirectly, rights to control or direct the Business or Seller Parties' operations thereof prior to Closing. Prior to Closing, Seller Parties shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of the Business and its respective operations.

Section 5.11 Third Party Consents and Regulatory Approvals. Subject to the terms and conditions of this Agreement, each of Buyer and Seller Parties will use its Best Efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable Legal Requirements to consummate the Contemplated Transactions as soon as practicable after the date hereof, including:

(i) preparing and filing, in consultation with the other party and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, novations, permits, Tax rulings and authorizations necessary to be obtained from any third party or any Governmental Body in order to consummate the Contemplated Transactions; and

(ii) taking all reasonable steps as may be necessary to obtain all such material consents, clearances, waivers, licenses, registrations, permits, authorizations, Tax rulings, orders and approvals, including but not limited to naming Buyer as a sub-contractor on all pending federal government contracts until such time as the novation of any such contract is approved by the relevant federal agency.

Section 5.12 Non-Solicitation.

(a) Upon execution of this Agreement, Seller Parties shall and shall cause their respective Representatives to cease immediately and cause to be terminated any and all existing activities, discussions or negotiations with any Person conducted heretofore with respect to, or that may reasonably be expected to lead to, an Acquisition Proposal. Seller shall promptly after the date of this Agreement instruct each Person which has heretofore executed a confidentiality agreement relating to an Acquisition Proposal with or for the benefit of Seller Parties to promptly return or destroy all information, documents, and materials relating to the Acquisition Proposal or to Seller Parties or their respective businesses, operations or affairs heretofore furnished by Seller Parties or any of their respective Representatives to such Person or any of their respective Representatives in accordance with the terms of any confidentiality agreement with such Person.

(b) For one (1) year after the Closing Date, Seller Parties agree that they shall not, and that they shall cause their respective Representatives not to, directly or indirectly, (i) initiate, solicit, or knowingly encourage or knowingly facilitate the submission of any inquiry, indication of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (ii) participate in any discussions or negotiations regarding, or furnish any non-public information to any Person (other than Buyer) in connection with, an Acquisition Proposal, (iii) enter into any letter of intent or agreement related to an Acquisition Proposal, or (iv) approve or recommend an Acquisition Proposal.

(c) For purposes of this Agreement, "Acquisition Proposal" means any inquiry, indication of interest, proposal or offer for any transaction or series of related transactions involving (i) a merger, tender offer, recapitalization, reorganization, liquidation, dissolution, business combination or consolidation, or any similar transaction, involving Seller Parties or the Business, (ii) a sale, lease, license, exchange, mortgage, pledge, transfer or other acquisition of assets that constitute at least 10% of the Assets, taken as a whole, or (iii) a purchase or other acquisition (including by way of merger, consolidation, stock exchange or otherwise) of beneficial ownership (the term "beneficial ownership" for purposes of this Agreement having the meaning assigned thereto in Section 13(d) of the Exchange Act and the rules and regulations thereunder) of securities representing 10% or more of the voting power of Seller Parties; provided, however, that the term "Acquisition Proposal" shall not include the Contemplated Transactions.

Section 5.13 Alternate Name Designation. On or before the Closing Date, Seller shall deliver a certificate to Buyer evidencing the termination of Seller's name as "Integrio Technologies, LLC" or any similar name, to be filed by the Member Representative following completion of the novation process described in Section 5.15 and shall cooperate with Buyer to secure such name designation for Buyer's use.

Section 5.14 Restrictions on Seller Dissolution and Distributions. Seller Parties shall not dissolve, or make any distribution of the proceeds received pursuant to this Agreement, until the later of (a) thirty (30) days after the completion of all adjustment procedures contemplated by Section 2.3(b)(Post-Closing Adjustment); and (b) Seller Parties' payment, or adequate provision for the payment, of all of their obligations pursuant to Sections 2.5 (Sales and Transfer Taxes) and 5.3 (Payment of Other Retained Liabilities).

Section 5.15 Novation of Government Contracts.

(a) Anything in this Agreement to the contrary notwithstanding, to the extent that any Assumed Seller Contract is not capable of being assigned or transferred without the consent or waiver of the other party thereto or any Third Party, or if such assignment or transfer, or attempted assignment or transfer, would constitute a breach thereof or provide the other party thereto with a right of termination (a "Non-Assignable Contract"), this Agreement shall not constitute an agreement to assign or transfer such Non-Assignable Contract at the Closing and the Non-Assignable Contract shall be withheld from transfer at the Closing. However, if such consent (which may be obtained by way of any release, substitution or amendment necessary to novate all liabilities and obligations under any such Non-Assignable Contract so that, in any case, Buyer shall be solely responsible for such liabilities and obligations thereafter) is obtained following the Closing, the applicable Non-Assignable Contract shall be deemed automatically assigned and transferred to Buyer without further action by the parties. From and after the Closing, Seller Parties and Buyer will cooperate, in all reasonable respects, to obtain any required consent to permit the transfer of each Non-Assignable Contract to Buyer as soon as practicable after the Closing without payment of further consideration therefor; provided that the Seller Parties shall not be required to make any payments or agree to any material undertakings in connection therewith. Seller Parties shall make their personnel and counsel reasonably available (at Buyer's expense to the extent external counsel is engaged) to negotiate and document such consent. Until such consent is obtained, Seller Parties and Buyer will cooperate, in all reasonable respects, to provide to Buyer the benefits under each Non-Assignable Contract (with Buyer entitled to all the gains and responsible for all the losses, taxes, liabilities and/or obligations thereunder, but only to the extent such losses, taxes, liabilities and/or obligations are not attributable to the Seller Parties and their respective Affiliates) and to grant to Buyer the right to service any Non-Assignable Contract in the place and stead of the Seller Parties.

(b) Following the Closing, Seller will, in consultation with Buyer, and in accordance with, and to the extent required by, the Federal Acquisition Regulation Part 42, Subpart 42.12 or applicable law, promptly submit in writing to each of Seller's responsible contracting officer(s) a request of the applicable Governmental Body, to (i) recognize Buyer as the successor in interest to all of the Assumed Seller Contracts subject to novation as identified on Schedule 3.18(a) and (ii) if required, enter into a novation agreement (the "Novation Agreement") in substantially the form contemplated by such regulations. Buyer and Seller will each use commercially reasonable efforts (i) to promptly obtain all consents, approvals and waivers required for the purpose of processing, entering into and completing the Novation Agreements with regard to such Assumed Seller Contracts, including responding to requests for information by the applicable Governmental Body with regard to such Novation Agreement, and (ii) to provide all reasonable information and take all other actions reasonably necessary to obtain, execute and consummate such Novation Agreement (subject to confidential treatment with respect to any information provided to the extent reasonably requested by the party providing such information).

(c) From the Closing Date until such time as the applicable Governmental Body recognizes the transfer of the rights and obligations under the applicable government Assumed Seller Contracts to Buyer, in accordance with, and to the extent required by, the Federal Acquisition Regulation Part 42, Subpart 42.12 or applicable law, or the government Assumed Seller Contracts expire by their own terms, Seller Parties and Buyer shall operate under the Subcontractor Agreement pending completion of the novation process.

**ARTICLE VI  
INDEMNIFICATION; REMEDIES**

Section 6.1 Survival. Unless otherwise explicitly set forth in this Agreement, all representations and warranties, in this Agreement, the Disclosure Letter, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall be accurate as of the date of such certificate or document and as of the Closing date. No party may bring a claim under this Article VI for any Breach of any representation or warranty made in this Agreement after the second anniversary of the Closing Date. No party may bring a claim under this Article VI for any Breach of any covenant or obligation under this Agreement after the second anniversary of the date on which such covenant expired or such obligation was to be performed. The parties expressly intend to limit the statute of limitations that may otherwise be applicable to a cause of action under this Agreement, other than fraud. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

Section 6.2 Indemnification and Reimbursement by Seller Parties. Seller Parties will, jointly and severally, indemnify and hold harmless Buyer, Parent, and their respective employees, directors, Representatives, stockholders and subsidiaries (collectively, the “Buyer Indemnified Persons”), and will reimburse Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys’ fees and expenses), whether or not involving a Third-Party Claim (collectively, “Damages”), arising from or in connection with:

- (a) any Breach of any representation or warranty made by Seller Parties in (i) this Agreement, (ii) the Disclosure Letter, (iii) the Seller Closing Documents delivered pursuant to Section 2.7, (iv) any transfer instrument or (v) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;
- (b) any Breach of any covenant or obligation of Seller Parties in this Agreement or in any other certificate, document, writing or instrument delivered by Seller Parties pursuant to this Agreement;
- (c) any Liability arising out of the ownership or operation of the Assets prior to the Closing Date other than the Assumed Liabilities;
- (d) any amount representing fees and expenses or other costs attributable to Seller Parties arising out of or in connection with the Contemplated Transactions;
- (e) any litigation pending or threatened on the Closing Date against Seller Parties;
- (f) any Retained Liabilities; and
- (g) any amount by which the Specified Assumed Liabilities exceed the amounts shown on Schedule 2.6(a)(iii).



Notwithstanding anything to the contrary set forth in this Agreement, the sole recourse for the indemnification provided in this Article VI shall, absent fraud or willful misconduct, shall be recoupment of the Annual Cash Payments and/or the Earnout Payments as provided herein, and such recoupment shall be the exclusive remedy available to the Buyer Indemnified Persons arising from or relating to any of the Contemplated Transactions, including (without limitation) in respect of any breach of or noncompliance with any provision of this Agreement by Seller Parties or their respective Representatives; provided, that Buyer shall not be entitled to any such recoupment, unless and until the aggregate amount with respect to such claim exceeds ten thousand dollars (\$10,000) (the "Threshold"), except for claims related to Section 6.2(g) which shall not be subject to such Threshold and will be recoverable dollar for dollar.

Section 6.3 Indemnification and Reimbursement by Buyer. Buyer will indemnify and hold harmless the Seller Parties, Seller Members, the Member Representative and the Earnout Representative (collectively, the "Seller Indemnified Parties"), and will reimburse Seller Indemnified Parties, for any Damages arising from or in connection with:

- (a) any Breach of any representation or warranty made by Buyer and Parent in this Agreement or in any certificate, document, writing or instrument delivered by Buyer or Parent pursuant to this Agreement;
- (b) any Breach of any covenant or obligation of Buyer or Parent in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer or Parent pursuant to this Agreement;
- (c) any Liability arising out of the ownership or operation of the Assets after the Closing Date other than the Retained Liabilities; or
- (d) any Assumed Liabilities.

Section 6.4 Right of Set off Against Annual Cash Payments and Earnout Payments. Subject to Section 6.2, upon a good faith determination of a reasonable claim for indemnity and upon written notice to Member Representative specifying in reasonable detail the basis therefor (a "Set-off Claims Notice"), Buyer may set off and recoup any amount of Damages to which Buyer may be entitled under this Article VI against and from the aggregate amounts that are otherwise payable to Seller Parties hereunder as the Annual Cash Payments and Earnout Payments, subject to the following terms and conditions:

- (a) Buyer, in good faith, may so set off against and recoup from amounts that are otherwise payable to Seller Parties hereunder as Annual Cash Payments and Earnout Payments in any order of maturity and in any combination so long as Buyer specifies such order and such combination in the applicable Set-off Claims Notice and follows all of the required procedures set forth in this Article VI;
- (b) the dollar amount of any such set off shall become final on the later to occur of the expiration of thirty (30) days from the date Buyer gives Member Representative a Set-off Claims Notice (the "Notice of Contest Period") or, if the underlying basis for such Damages claim is contested by Seller, the date such dispute is resolved;
- (c) notwithstanding a dispute regarding the dollar amount or basis of any proposed set off specified in a Set-off Claims Notice, the underlying portion of the applicable Annual Cash Payments or Earnout Payment shall be retained by Buyer until such dispute is resolved;

(d) if, prior to the expiration of the Notice of Contest Period, Member Representative shall notify Buyer in writing of an intention to dispute the Damages claim and if such dispute is not resolved within thirty (30) days after expiration of such period, then Buyer may take any other action or exercise any other remedy available to it by appropriate legal proceedings to enforce its rights and remedies hereunder; and

(e) all set-offs and recoupments of Damages by Buyer hereunder shall be treated as adjustments to and cannot exceed the Purchase Price.

Section 6.5 Third Party Claims Where Buyer Potentially Indemnified. In the event Buyer becomes aware of a Third-Party Claim or Damages which Buyer believes may result in a demand against the Annual Cash Payments and/or the Earnout Payments or a claim for Damages pursuant to the indemnification provisions of Section 6.2 hereof, Buyer shall notify Member Representative of such claim. Buyer shall have the right to settle any such claim with the consent of the Member Representative which shall not be unreasonably withheld so long as Seller Parties, the Seller Members and the Member Representative will be fully released from such claim in connection with such settlement. In the event that the Member Representative has consented to any such settlement, Member Representative shall have no power or authority to object to the amount of any claim by Buyer against the Annual Cash Payments and/or the Earnout Payments for indemnity with respect to such settlement. The following procedures shall apply to this Section 6.5:

(a) If within 30 days after receiving such notice, the Member Representative gives written notice to Buyer stating it intends to defend against such claim or Damages at its own cost and expense, the defense (including the right to settle or compromise such action, subject to the consent of Buyer, which consent shall not be unreasonably withheld) of such matter, including selection of counsel (subject to the consent of Buyer, which consent shall not be unreasonably withheld) and the sole power to direct and control such defense, shall be by the Member Representative and the Member Representative shall make no payment in respect of such claim or Damages to any Third Party as long as the Member Representative is conducting a good faith and diligent defense. In any such defense, the Member Representative will consult with Buyer in connection with the Member Representative's defense, and Buyer shall make available all information and assistance that the Member Representative may reasonably request and shall cooperate with Seller in such defense.

(b) In any such proceeding, Buyer shall have the right to retain its own counsel, and will pay the fees and expenses of such counsel, unless: (i) the Member Representative and Buyer shall have mutually agreed to the contrary; (ii) the Member Representative has failed within a reasonable time to retain counsel; or (iii) the named parties in any such proceeding (including any impleaded parties) include both Buyer and any Seller Party and representation of each party by the same counsel would be inappropriate due to actual or potential differing interests between them. In any case specified in clauses (i), (ii) or (iii) of the preceding sentence, Seller Parties will bear the fees and expenses of counsel retained by Buyer, it being understood that Seller Parties shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for fees and expenses of more than one separate firm (in addition to any local counsel) for Buyer, and that all such fees and expenses shall be reimbursed by Seller as they are incurred. Any such separate counsel for which Buyer claims it is entitled to have Seller bear fees and expenses shall be designated in writing by Buyer. If in any such proceeding there shall be a settlement or final judgment for the plaintiff, Seller agrees to indemnify Buyer from and against any loss or liability by reason of such settlement or judgment, provided that if the proceeding is resolved by settlement, Seller has consented in writing to the settlement, which consent will not be unreasonably withheld. Notwithstanding the foregoing, if at any time Buyer shall have requested Seller to reimburse Buyer for fees and expenses of counsel as contemplated in this Section 6.5(b), Seller agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (x) such settlement is entered into more than 30 days after receipt by Seller of the request for reimbursement; and (y) Seller shall not have reimbursed Buyer in accordance with such request (other than due to a reasonable dispute as to the validity of such request) prior to the date of settlement.

(c) If no notice of intent to dispute and defend is given by the Member Representative under Section 6.5(a), or if the Member Representative fails or ceases to conduct a diligent good faith defense, Buyer shall, at the expense of Seller, undertake the defense of such claim or Damages with counsel selected by Buyer, and shall have the right to compromise or settle the same exercising reasonable business judgment.

Section 6.6 Third Party Claims Where Seller Indemnified Parties Potentially Indemnified In the event any Seller Party becomes aware of a Third-Party Claim or Damages which is believed may result in a claim for Damages pursuant to the indemnification provisions of Section 6.3 hereof, the Member Representative shall notify Buyer of such claim. The Seller Indemnified Parties shall have the right to settle any such claim with the consent of Buyer which shall not be unreasonably withheld so long as Buyer and its Representatives will be fully released from such claim in connection with such settlement. The following procedures shall apply to this Section 6.6:

(a) If within 30 days after receiving such notice, Buyer gives written notice to the Seller Indemnified Parties stating it intends to defend against such claim or Damages at its own cost and expense, the defense (including the right to settle or compromise such action, subject to the consent of the Seller Indemnified Parties, which consent shall not be unreasonably withheld) of such matter, including selection of counsel (subject to the consent of the Seller Indemnified Parties, which consent shall not be unreasonably withheld) and the sole power to direct and control such defense, shall be by Buyer and Buyer shall make no payment in respect of such claim or Damages to any Third Party as long as Buyer is conducting a good faith and diligent defense. In any such defense, Buyer will consult with the Seller Indemnified Parties in connection with Buyer's defense, and the Seller Indemnified Parties shall make available all information and assistance that Buyer may reasonably request and shall cooperate with Seller in such defense.

(b) In any such proceeding, the Seller Indemnified Parties shall have the right to retain its/their own counsel, and will pay the fees and expenses of such counsel, unless: (i) the Seller Indemnified Parties and Buyer shall have mutually agreed to the contrary; (ii) Buyer has failed within a reasonable time to retain counsel; or (iii) the named parties in any such proceeding (including any impleaded parties) include both Buyer and the Seller Indemnified Parties and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. In any case specified in clauses (i), (ii) or (iii) of the preceding sentence, Buyer will bear the fees and expenses of counsel retained by the Seller Indemnified Parties, it being understood that Buyer shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for fees and expenses of more than one separate firm (in addition to any local counsel) for the Seller Indemnified Parties, and that all such fees and expenses shall be reimbursed by Buyer as they are incurred. Any such separate counsel for which any Seller Party claims it is entitled to have Buyer bear fees and expenses shall be designated in writing by the Seller Indemnified Parties. If in any such proceeding there shall be a settlement or final judgment for the plaintiff, Buyer agrees to indemnify the Seller Indemnified Parties from and against any loss or liability by reason of such settlement or judgment, provided that if the proceeding is resolved by settlement, Buyer has consented in writing to the settlement, which consent will not be unreasonably withheld. Notwithstanding the foregoing, if at any time the Seller Indemnified Parties shall have requested Buyer to reimburse the Seller Indemnified Parties for fees and expenses of counsel as contemplated in this Section 6.6(b), Buyer agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (x) such settlement is entered into more than 30 days after receipt by Buyer of the request for reimbursement; and (y) Buyer shall not have reimbursed the Seller Indemnified Parties in accordance with such request (other than due to a reasonable dispute as to the validity of such request) prior to the date of settlement.

(c) If no notice of intent to dispute and defend is given by Buyer under Section 6.6(a), or if Buyer fails or ceases to conduct a diligent good faith defense, the Seller Indemnified Parties shall, at the expense of the Seller Indemnified Parties, undertake the defense of such claim or Damages with counsel selected by the Seller Indemnified Parties, and shall have the right to compromise or settle the same exercising reasonable business judgment.

Section 6.7 Novation Failure Payment

(a) Upon the first to occur of (i) an affirmative rejection by the appropriate contracting officer of a novation to the Buyer of government Seller Contracts identified on Schedule 2.1(b), or (ii) a failure of such government Seller Contract to be novated to Buyer on or prior to the second anniversary of the Closing (either, a "Novation Failure"), in each case only as the result of any act, omission or fault of a Seller Party, then Buyer may set off and recoup, in good faith, an amount equal to One Hundred Thousand Dollars (\$100,000) (the "Novation Failure Amount") against and from the aggregate amounts that are otherwise payable to Seller Parties hereunder as the Annual Cash Payments and Earnout Payments. In view of the difficulty of estimating the Damages to Parent and the Buyer upon a Novation Failure, the Novation Failure Amount is agreed upon by the Parties as the liquidated damages that Parent and the Buyer will suffer as a result of the Novation Failure and not by way of penalty. The Novation Failure Amount shall be the sole recourse of Parent and the Buyer for a Novation Failure; provided, that in no event shall payment of the Novation Failure Amount pursuant to this Section 6.7 limit or restrict Parent's and Buyer's available remedies under this Agreement, or at law or in equity, for any claim not resulting from or arising out of a Novation Failure.

(b) The rights of Buyer with respect to the Annual Cash Payments and Earnout Payments under this Agreement shall be in addition to and not in limitation of any other rights and remedies to which Buyer is or may be entitled under this Agreement, or at law or in equity, including injunctive relief, to enforce payment of the full Novation Failure Amount.

**ARTICLE VII  
CONFIDENTIALITY**

Section 7.1 Definition of Confidential Information. As used in this Article VII, the term "Confidential Information" means any and all of the following information of Seller Parties, Buyer or Parent that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party (Buyer and Parent, on the one hand, or Seller Parties, on the other hand) or its Representatives (collectively, a "Disclosing Party") to the other party or its Representatives (collectively, a "Receiving Party"): (i) all information that is a trade secret under applicable trade secret or other law; (ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures; (iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, Tax Returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; (iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing; and (v) the existence of this Agreement or any of the terms of this Agreement or the Contemplated Transactions.

Section 7.2 Restricted Use of Confidential Information. Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of the Disclosing Party. From and after the Closing, the provisions of this Article VII shall not apply to or restrict in any manner Buyer's use of any Confidential Information of Seller relating to any of the Assets or the Assumed Liabilities. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the Receiving Party's attorneys and accountants.

Section 7.3 Exceptions. Notwithstanding Section 7.1 above, Confidential Information shall not include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Company to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Company as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a Third Party without a breach of such third party's obligations of confidentiality; (v) is required by law to be disclosed by the Receiving Party, provided that the Receiving Party gives the Company prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

## ARTICLE VIII TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the Contemplated Transactions may be abandoned at any time prior to the Closing Date:

- (a) by mutual written consent of Seller and Buyer;
- (b) by either Buyer or Seller if any Governmental Body of competent jurisdiction shall have issued a final and non-appealable order, decree, judgment, injunction or ruling or taken any other action enjoining, restraining or otherwise prohibiting the consummation of the Contemplated Transactions; provided that the party seeking to terminate this Agreement shall have used its Best Efforts to have such order, decree, judgment, injunction or ruling lifted if and to the extent required by Section 5.12;
- (c) by either Buyer or Seller if the Contemplated Transactions, other than the novation process described in Section 5.15, shall not have been consummated on or before November 30, 2016 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 8.1(c) shall not be available to any party if such party failed in any material respect to perform any of its obligations under this Agreement or otherwise violated this Agreement in any material respect;
- (d) by Buyer, in the event that Seller shall have (i) had an order, injunction, judgment, ruling or decree, or other legal restraint or prohibition issued by any court of competent jurisdiction, or Governmental Body preventing the consummation of the Agreement and the Contemplated Transactions, (ii) breached or failed to perform in any material respect any of its covenants or obligations required to be performed by it under this Agreement or (iii) materially breached any representation or warranty contained herein, or if a representation or warranty of Seller shall have become untrue, which has not been cured within fifteen (15) calendar days following notice by Buyer, or if the Termination Date is less than fifteen (15) calendar days from the notice by Buyer, has not been or cannot reasonably be expected to be cured by the Termination Date; provided that Buyer is not in material breach of any representation, warranty or covenant contained in this Agreement;

(e) by Seller, in the event that Buyer shall have (i) breached or failed to perform in any material respect any of its covenants or obligations required to be performed by it under this Agreement or (ii) materially breached any of its representations or warranties, in either case which breach or failure would reasonably be expected to prevent or materially delay the consummation of the Contemplated Transactions and is either incurable or, if curable, is not cured by Buyer within fifteen (15) calendar days following notice by Seller or, if the Termination Date is less than fifteen (15) calendar days from the notice by Seller, has not been or cannot reasonably be expected to be cured by the Termination Date; provided at the time of the delivery of such written notice Seller is not in material breach of any representation, warranty or covenant contained in this Agreement;

(f) by Buyer upon written notice to Seller in the event Buyer determines that it is not satisfied, in its sole discretion, with the results of its due diligence review of Seller; or

(g) upon written notice by Buyer to Seller if any investment banking firm engaged by Buyer disapproves the Contemplated Transactions.

Section 8.2 Effect of Termination. In the event of a termination and abandonment of this Agreement by either Buyer or Seller as provided in Section 8.1, this Agreement shall immediately become void and have no effect, and none of Buyer, Seller, any of their respective Representatives shall have any liability or obligation of any nature whatsoever hereunder, or in connection with the Contemplated Transactions, except that such obligations of the parties specifically intended to be performed after the termination of this Agreement shall survive any termination of this Agreement. Notwithstanding the foregoing, neither of Buyer or Seller shall be relieved or released from any liabilities or damages (which the parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs, and may include to the extent proven the benefit of the bargain lost by such party or such party's equityholders) arising out of its intentional breach of any provision of this Agreement or any other agreement delivered in connection herewith, or any fraud and provided further, that in circumstances where Seller or Buyer is obligated to consummate the Contemplated Transactions, the failure by such party to consummate the Contemplated Transactions in accordance with the provisions hereof shall be deemed an intentional breach by such party of this Agreement.

## ARTICLE IX GENERAL PROVISIONS

Section 9.1 Expenses. Each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of its Representatives.

Section 9.2 Public Announcements. Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer determines, provided that it is understood and agreed that Buyer and Seller shall consult with each other in good faith regarding the content and form of any press release or other announcement or disclosure relating to the Contemplated Transactions.

Section 9.3 Notices. All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by e-mail or facsimile with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses or facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address or facsimile number or person as a party may designate by notice to the other parties):

Seller Parties:

Integrio Technologies, LLC  
2355 Dulles Corner Boulevard  
Suite 600  
Phone: 703.961.1125  
Fax: 703.961.1127  
Attn: Greg Chandler

With a copy to:

Blackstone Counsel  
1934 Old Gallows Road  
Suite 350  
Vienna, VA 22182  
Phone: 703.226.8023  
Fax: 703.991.6460  
Attn: Frank Blackstone

Buyer and Parent:

Sysorex Global  
2479 E. Bayshore Road  
Suite 195  
Palo Alto, CA 94303  
Phone: 408.702.2167  
Fax: 408.824.1543  
Attn: Nadir Ali, CEO

With a copy to:

Mitchell Silberberg & Knupp LLP  
12 E. 49th Street  
30th Floor  
New York, NY 10017  
Phone: 917-546-7707  
Email: mxmf@msk.com  
Attn: Melanie Figueroa, Esq.

Section 9.4 Jurisdiction: Venue. Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the state or federal courts located in the City of Los Angeles, California and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court.

Section 9.5 Enforcement of Agreement. Each party hereto acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by either party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which each party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

Section 9.6 Waiver; Extension; Remedies Cumulative. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. At any time prior to the Closing Date, the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein; provided, however, that after the approval and adoption of this Agreement by Seller Members, no extension or waiver of this Agreement or any portion thereof shall be made which by any Legal Requirement requires further approval of the members of Seller without obtaining such approval. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver or failure or delay to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 9.7 Entire Agreement and Modification. This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Seller) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

Section 9.8 Disclosure Letter.

(a) The information in the Disclosure Letter constitutes (i) exceptions to particular representations, warranties, covenants and obligations of Seller Parties as set forth in this Agreement or (ii) descriptions or lists of assets and liabilities and other items referred to in this Agreement. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Letter (other than an exception expressly set forth as such in the Disclosure Letter with respect to a specifically identified representation or warranty), the statements in this Agreement will control.

(b) The statements in the Disclosure Letter relate only to the provisions in the Section of this Agreement to which they expressly relate and not to any other provision in this Agreement.

(c) Any disclosures contained in the Disclosure Letter which refer to a document are qualified in their entirety by reference to the text of such document, a true and complete copy of which has been included in the due diligence information supplied to Buyer.



(d) Seller Parties may amend or supplement the Disclosure Letter and schedules of this Agreement prior to the Closing, provided that Buyer may reject, in its sole discretion, any such supplements or amendments to the Disclosure Letter or schedules and thereupon exercise its termination right under Section 8.1(f) unless Seller Parties withdraw such proposed supplement or amendment.

Section 9.9 Assignments, Successors and No Third-Party Rights. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 9.9.

Section 9.10 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 9.11 Construction. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," "Sections" and "Parts" refer to the corresponding Articles, Sections and Parts of this Agreement and the Disclosure Letter.

Section 9.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 9.13 Governing Law. This Agreement will be governed by and construed under the laws of the State of Nevada without regard to conflicts-of-laws principles that would require the application of any other law.

Section 9.14 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or email shall be deemed to be their original signatures for all purposes.

Section 9.15 Construction. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

**ARTICLE X  
MEMBER REPRESENTATIVE**

Section 10.1 Appointment. To efficiently administer Seller Parties' post-Closing obligations and rights under this Agreement, including the defense and/or settlement of any claims for indemnity by Buyer pursuant to Article VI, Greg Chandler is hereby appointed to serve as the representative of the Seller Members (the "Member Representative"). The Member Representatives shall have full power and authority to make all decisions relating to the defense and/or settlement of any claims for which Buyer Indemnified Parties may claim to be entitled to indemnity pursuant to Article VI, all decisions and actions relating to any adjustment to the Aggregate Share Consideration and otherwise to act on behalf of the Seller Members in all respects with respect to this Agreement, including, without limitation, the amendment or termination of such agreements. All decisions and actions by the Member Representative shall be binding upon all the Seller Members, and no Seller Members shall have the right to object to, dissent from, protest or otherwise contest the same. In the event of the death, incapacity or resignation of the Member Representative, the Seller Members holding a majority of the voting membership interests of Seller immediately prior to the Closing Date (the "Majority Members") shall promptly appoint a substitute Member Representative; provided, however, in no event shall a Member Representative resign without the Majority Members having first appointed a substitute Member Representative who shall assume such duties immediately upon the resignation of such Member Representative. From and after such time when Seller dissolves itself as a limited liability company and continuing until the second anniversary of the Closing, the Member Representative shall be authorized and obligated to act on behalf of Seller in order to fulfill all of Seller Parties' covenants set forth in Article V (other than Section 5.7) that survive the Closing, including without limitation, Section 5.10. By his signature below, the Member Representative agrees to fulfill such obligation for the period specified.

Section 10.2 Decisions Final. Buyer shall have no right to object to, protest or otherwise contest any matter related to the procedures for action being taken by the Member Representative as between the Member Representative and the Seller Members. Buyer hereby waives any claims it may have or assert, including those that may arise in the future, against any Member Representative or any of his affiliates (other than Seller Parties) that relate to such Member Representative's role as such, including any claims for any action or inaction taken or not taken by the Member Representative in connection herewith.

Section 10.3 Binding Relationship. Each Seller Member that accepts payment of consideration in respect of this Agreement shall be deemed, by such acceptance of payment, to have agreed that (i) the provisions of this Article X are independent and severable, are irrevocable and coupled with an interest and shall be enforceable notwithstanding any rights or remedies such Seller Member may have in connection with the transactions contemplated by this Agreement, (ii) the remedy at law for any breach of the provisions of this Article X would be inadequate, (iii) such Seller Member shall be entitled to temporary and permanent injunctive relief without the necessity of proving damages if such Seller Member brings an action to enforce the provisions of this Article X and (iv) the provisions of Article X shall be binding upon such Seller Member and the successors and assigns of such Seller Member. In addition, each Seller Member that accepts payment of consideration in respect of this Agreement shall be deemed, by such acceptance of payment, to:

(a) have waived any claims he, she or it may have or assert, including those that may arise in the future, against any Member Representative and any of his affiliates, for any action or inaction taken or not taken by the Member Representative in connection therewith; and

(b) have agreed to his or her portion, if any, of the Annual Cash Payments and/or the Earnout Payments be withheld by Buyer in accordance with Article VI hereto.

Section 10.4 Notices. Any notice or communication delivered by Buyer to the Member Representative shall, as between Buyer, on the one hand, and the Seller Members, on the other hand, be deemed to have been delivered to all Seller Members. Buyer shall be entitled to rely exclusively upon any communication or writings given or executed by the Member Representative in connection with any claims for indemnity and shall not be liable in any manner whatsoever for any action taken or not taken in reliance upon the actions taken or not taken or communications or writings given or executed by the Member Representative. Buyer shall be entitled to disregard any notices or communications given or made by the Seller Members (other than the Member Representative, if applicable) in connection with any claims for indemnity unless given or made through the Member Representative.

Section 10.5 Member Representative Expenses. In the event that the Member Representative determines to hire or retain any attorneys, accountants or other subject matter experts or to incur any third party costs or expenses in connection with any dispute resolution process on the Seller Members' behalf, all such fees, costs and expenses shall be the sole responsibility of the Seller Parties. In the event that any travel by the Member Representative or his agents is reasonably required in connection with the performance of his obligations under this Agreement or the Member Representative directly pays any costs or expenses for which he is entitled to reimbursement, the Member Representative shall be reimbursed for all such reasonable expenses in the same manner as if such expenses were third party expenses under the terms set forth herein. On such date when all indemnification claims made by Buyer pursuant to Article VI hereof shall have been finally resolved in accordance therewith, the Member Representative shall have the right to recover reasonable expenses incurred by the Member Representative in connection herewith upon delivery to Buyer of a certificate setting forth the Member Representative expenses actually incurred.

Section 10.6 Limitation of Liability. In addition to all the protections and rights granted to the Member Representative in Article VI hereof, to the maximum extent permissible by applicable law, the Member Representative (and any successor to the Member Representative) will incur no personal liability to Buyer, Buyer Indemnified Parties, Seller Parties or Seller Members with respect to any action or inaction taken or failed to be taken in connection with his services as the Member Representative, except with respect to his own willful misconduct, gross negligence or bad faith. The Member Representative may rely in good faith conclusively upon information, reports, statements and opinions prepared by professionals hired or retained by the Member Representative.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the date first written above.

BUYER:  
Sysorex Government Services, Inc.

By: /s/ Nadir Ali  
Nadir Ali  
Director

SELLER:  
Integrio Technologies, LLC

By: /s/ Barry Culman  
Barry Culman  
Chief Executive Officer

PARENT:  
Sysorex Global

By: /s/ Nadir Ali  
Nadir Ali  
Chief Executive Officer

SELLER SUB:  
Emtec Federal, LLC

By: /s/ Barry Culman  
Barry Culman  
President

*ACKNOWLEDGED AND AGREED SOLELY FOR PURPOSES OF ARTICLE X BY:*

MEMBER REPRESENTATIVE

/s/ Greg Chandler  
Greg Chandler

[Signature Page to SYRX – Integrio Asset Purchase Agreement]

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**Exhibit A**

**Bill of Sale**



**Exhibit B**

**Form of Assignment and Assumption Agreement**



Exhibit C

**Form of Domain Name Assignment Agreement**



**Exhibit D**

**Form of Investor Representation Statement**





**Exhibit E**

**Form of Payoff and Estoppel Letter**



**Exhibit F**

**Form of Sub-Contractor Agreement**

[In form and substance to be agreed upon by Buyer and Seller following the execution hereof]

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Exhibit G

**Form of Lease Assignment**



**LOAN AND SECURITY AGREEMENT**

**by and between GEMCAP LENDING I, LLC**

**as Lender and**

**SYSOREX GLOBAL, SYSOREX USA and SYSOREX GOVERNMENT SERVICES INC.,**

**jointly and severally,**

**as Borrower**

**Dated: November 14, 2016**

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## LOAN AND SECURITY AGREEMENT

**LOAN AND SECURITY AGREEMENT**, dated as of November 14, 2016, by and between SYSOREX GLOBAL, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SG**”), SYSOREX USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SUSA**”) and SYSOREX GOVERNMENT SERVICES, INC., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SGS**”) and together with SUSA and SG, jointly and severally the “**Borrower**”), and GEMCAP LENDING I, LLC, a Delaware limited liability company with offices at 24955 Pacific Coast Highway, Suite A202, Malibu, CA 90265 (together with its successors and assigns, the “**Lender**”).

### RECITALS:

**WHEREAS**, Borrower desires to enter into a revolving loan credit facility with Lender; and

**WHEREAS**, Lender is willing to establish such credit facility on the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and agreements herein contained and other good and valuable consideration, Lender and Borrower mutually covenant, warrant and agree as follows:

### SECTION 1. DEFINITIONS AND RULES OF INTERPRETATION AND CONSTRUCTION

**Specific Terms Defined.** Capitalized terms used herein and not otherwise defined have the following meanings:

**1.1 “Account Debtor” or “account debtor”** means “account debtor” as defined in Article 9 of the UCC, and any other Persons obligated in respect of Accounts.

**1.2 “Accounts” or “accounts”** means “accounts” as defined in the UCC, and, in addition, any and all obligations of any kind at any time due and/or owing to Borrower, whether now existing or hereafter arising, and all rights of Borrower to receive payment or any other consideration including, without limitation, pursuant to invoices, contract rights, leases, accounts receivable, general intangibles, choses-in-action, notes, drafts, acceptances, instruments, and all other debts, obligations and liabilities in whatever form owing to Borrower from any Person, and all of Borrower’s rights to receive payments for goods sold (whether delivered, undelivered, in transit or returned) or assets leased or services rendered (whether or not earned by performance), which may be represented thereby, or with respect thereto, and all property pledged as collateral security for any of the foregoing, and all rights as an unpaid vendor (including stoppage in transit, replevin or reclamation), and all additional amounts due from any Account Debtor, whether or not invoiced, together with all Proceeds and products of any and all of the foregoing.

**1.3 “ACH”** has the meaning set forth in Section 2.5 hereof.

**1.4 “Advance”** has the meaning as set forth in Section 1(c)(ii) of the Loan Agreement Schedule.

**1.5 “Affiliate”** means, with respect to any Person, (a) any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Person, including any Subsidiary, or (b) any other Person who is a director, manager, officer or who may function in a similar role (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For the purposes of this definition, control of a Person means the power (direct or indirect) to direct or cause the direction of the management or the policies of such Person, whether through the ownership of any voting securities, by contract or otherwise.

**1.6 “Agreement”** means this Loan and Security Agreement (including the Loan Agreement Schedule, all Exhibits annexed hereto and the Borrower’s Disclosure Schedule) as originally executed or, if amended, modified, supplemented, renewed or extended from time to time, as so amended, modified, supplemented, renewed or extended.

**1.7 “Availability”** means, as of any date of determination, the lesser of (i) the Borrowing Base (as set forth in the most recently delivered Borrowing Certificate), and (ii) Ten Million Dollars (\$10,000,000).

**1.8 “Balance Sheet”** means the balance sheet of Borrower dated as of the Balance Sheet Date

**1.9 “Balance Sheet Date”** means September 30, 2016.

**1.10 “Bankruptcy Code”** means the United States Bankruptcy Code, Title 11, United States Code, as the same may be amended and modified from time to time.

**1.11 “Borrower”** has the meaning set forth in the introductory paragraph hereof.

**1.12 “Borrower’s Disclosure Schedule”** means the disclosure schedule prepared by Borrower that is being delivered to Lender concurrently herewith or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

**1.13 “Borrower’s Premises”** means the property leased by the Borrower located at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303, and 17 East Sir Francis Drake Boulevard, Suite 110, Larkspur, CA 94939.

**1.14 “Borrowing Base”** shall be calculated at any time as the product obtained by multiplying the outstanding amount of all Eligible Accounts, net of all Taxes, discounts, allowances and credits given or claimed, by up to eighty-five percent (85%).

**1.15 “Borrowing Certificate”** has the meaning as set forth in Section 1(c)(v) of the Loan Agreement Schedule.

**1.16 “Business”** means the provision of big data analytics and location based products and related services for the cyber-security and Internet of Things markets.

1.17 “**Business Day**” means any day other than a Saturday, Sunday or any other day on which banks located in the State of California are authorized or required to close under applicable banking laws.

1.18 “**Chattel Paper**” has the meaning ascribed to such term in the UCC.

1.19 “**Closing Date**” means the date of this Agreement.

1.20 “**Collateral**” has the meaning as set forth in Section 5.1 hereof.

1.21 “**Collection Account**” has the meaning set forth in Section 1(c)(vi) of the Loan Agreement Schedule.

1.22 “**Collections**” means with respect to any Account, all cash collections on such Account.

1.23 “**Commercial Tort Claims**” has the meaning ascribed to such term in the UCC.

1.24 “**Default Interest Rate**” has the meaning set forth in Section 3(b) of the Loan Agreement Schedule.

1.25 “**Deposit Accounts**” has the meaning ascribed to such term in the UCC.

1.26 “**Document**” or “document” has the meaning ascribed to such term in the UCC.

1.27 “**Domain Name, URL and IP Address Assignment**” means the Domain Name, URL and IP Address Assignment in form and substance acceptable to Lender as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

1.28 “**Electronic Chattel Paper**” has the meaning ascribed to such term in the UCC.

1.29 “**Eligible Accounts**” means Accounts created by Borrower which satisfy all of the following criteria:

(1) such Accounts are created from, or arise in connection with, the sale of Inventory or performance of services in the ordinary course of Borrower’s Business;

(2) such Accounts are good and valid Accounts representing undisputed bona fide Indebtedness incurred by the Account Debtor therein named, for a fixed sum as set forth in the invoice relating thereto with respect to either an unconditional sale and delivery upon the stated terms of Inventory sold by the Borrower or the performance of services by Borrower, and collectible in accordance with their terms; such Inventory has been shipped to the Account Debtor; Borrower has possession of and has delivered to Lender, shipping and delivery receipts evidencing shipment of such Inventory; and the Inventory sold by Borrower giving rise to the Account shall have been accepted by the Account Debtor as evidenced by acceptance documentation duly executed by the Account Debtor and delivered to Lender, in form and substance satisfactory to Lender; Borrower has performed all services for the Account Debtor; Borrower has possession of and has delivered to Lender, documents evidencing the performance of services;

(3) the amounts of the Accounts reported to Lender are the actual amounts absolutely owing to Borrower and do not arise from sales on consignment, guaranteed sales or other terms under which payment by the Account Debtors may be conditional or contingent;

(4) such Accounts do not arise from progress billings, retainages, bill and hold sales, or with respect to services, services not yet provided or services billed on a deferred revenue basis;

(5) there are no contra relationships, setoffs, counterclaims or disputes existing with respect thereto;

(6) the Inventory giving rise thereto are not subject to any Liens except for the Liens of Lender;

(7) such Accounts are free and clear of all Liens except for the Liens of Lender;

(8) such Accounts are not Accounts with respect to which the Account Debtor or any officer or employee thereof is an officer, employee or agent of or is affiliated with Borrower, directly or indirectly, whether by virtue of family membership, ownership, control, management or otherwise;

(9) [Reserved]

(10) Borrower has delivered to Lender or Lender's representative such documents as Lender may have reasonably requested in connection with such Accounts and Lender shall have received a verification of such Accounts, reasonably satisfactory to it, if sent to the Account Debtor or any other obligor or any bailee;

(11) there are no facts existing or threatened which might result in any material adverse change in the Account Debtor's financial condition;

(12) such Accounts are not owed by an Account Debtor with respect to which more than 25% of such Account Debtor's Accounts have remained unpaid for more than ninety (90) days after the invoice date thereof;

(13) such Accounts have not remained unpaid for more than ninety (90) days after the invoice date thereof;

(14) such Accounts continue to be in full conformity with the representations and warranties made by Borrower to Lender with respect thereto;

(15) Lender is, and continues to be, reasonably satisfied with the credit standing of the Account Debtor in relation to the amount of credit extended;



(16) such Accounts are not evidenced by chattel paper or an instrument of any kind with respect to or in payment of the Account unless such instrument is duly endorsed to and in possession of Lender or represents a check in payment of an account;

(17) such Accounts are net of any returns, discounts, claims, credits and allowances;

(18) Borrower is able to bring suit and enforce its remedies against the Account Debtor through judicial process;

(19) such Accounts do not represent interest payments, late or finance charges owing to Borrower;

(20) such Accounts have credit insurance in such amounts and in form and substance reasonably acceptable to Lender in its sole and absolute discretion;

(21) Accounts that satisfy the criteria set forth in the foregoing items (1) – (20), which are owed by any other single Account Debtor or its Affiliates so long as such Accounts, in the aggregate, constitute no more than twenty percent (20%) of all Eligible Accounts; and

(22) notwithstanding the provisions of items (1) – (21), Accounts which are otherwise satisfactory to Lender in its sole and absolute discretion.

**1.30 “Environment”** means all air, surface water, groundwater or land, including, without limitation, land surface or subsurface, including, without limitation, all fish, wildlife, biota and all other natural resources.

**1.31 “Environmental Law” or “Environmental Laws”** means all federal, state and local laws, statutes, ordinances and regulations now or hereafter in effect, and in each case as amended or supplemented from time to time, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).

**1.32 “Environmental Liabilities and Costs”** means, as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any Environmental Law, permit, order or agreement with any Governmental Authority or other Person, and which arise from any environmental, health or safety conditions, or a Release or conditions that are reasonably likely to result in a Release, and result from the past, present or future operations of such Person or any of its Affiliates.

**1.33 “Environmental Lien”** means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

**1.34 “ERISA”** means the Employee Retirement Income Security Act of 1974, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

**1.35 “Equipment”** means “equipment”, as such term is defined in the UCC, now owned or hereafter acquired by Borrower, wherever located, and shall include, without limitation, the machinery and equipment set forth on Section 5.4(j) to the Borrower’s Disclosure Schedule, and all other equipment, machinery, furniture, Fixtures, computer equipment, telephone equipment, molds, tools, dies, partitions, tooling, transportation equipment, all other tangible assets used in connection with the manufacture, sale or lease of goods or rendition of services, and Borrower’s interests in any leased equipment, and all repairs, modifications, alterations, additions, controls and operating accessories, attachments and parts thereof or thereto, and all substitutions and replacements therefor.

**1.36 “Equipment Certificate”** has the meaning set forth in Section 7(b)(iv) of the Loan Agreement Schedule.

**1.37 “Equity Interests”** means, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, membership interests, units, participations or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC (or any successor thereto) under the Securities Exchange Act of 1934, as amended).

**1.38 “Event of Default”** means the occurrence or existence of any event or condition described in Section 11 of this Agreement.

**1.39 “Financial Statements”** has the meaning set forth in Section 8.9 hereof.

**1.40 “Financing Statements”** means the Uniform Commercial Code UCC Financing Statements and Uniform Commercial Code UCC Financing Statement Amendments to be filed with applicable Governmental Authorities of each State or Commonwealth or political subdivisions thereof pursuant to which Lender shall perfect its security interest in the Collateral.

**1.41 “Fiscal Year”** means that twelve (12) month period commencing on January 1 and ending on December 31.

**1.42 “Fixtures”** has the meaning ascribed to such term in the UCC.

**1.43 “GAAP”** means generally accepted accounting principles in effect in the United States of America at the time of any determination, and which are applied on a consistent basis. All accounting terms used in this Agreement which are not expressly defined in this Agreement shall have the meanings given to those terms by GAAP, unless the context of this Agreement otherwise requires.

**1.44 “General Intangibles”** has the meaning ascribed to such term in the UCC.

**1.45 “Goods”** has the meaning ascribed to such term in the UCC.

**1.46 “Governmental Authority”** or **“Governmental Authorities”** means any federal, state, county or municipal governmental agency, court, tribunal, department, instrumentality, board, commission, officer, official or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**1.47 “Hazardous Substances”** means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity,” (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

**1.48 “Hillair Capital”** means Hillair Capital Investments, L.P., a Cayman Island exempt limited partnership.

**1.49 “Indebtedness”** means, with respect to any Person, all of the obligations of such Person which, in accordance with GAAP, should be classified upon such Person’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including without limitation, with respect to Borrower, in any event and whether or not so classified, including the following:

(a) all debt and similar monetary obligations of a Person, whether direct or indirect;

(b) all obligations of a Person arising or incurred under or in respect of any guaranties (whether direct or indirect) of such Person with respect to the indebtedness of any other Person; and

(c) all obligations of a Person arising or incurred under or in respect of any Lien upon or in any property owned by Borrower that secures indebtedness of another Person, even though such Person has not assumed or become liable for the payment of such indebtedness.

**1.50 “Instruments”** has the meaning ascribed to such term in the UCC.

**1.51 “Intellectual Property”** means all of the following intellectual property used in the conduct of the Borrower’s Business: (a) inventions, processes, techniques, discoveries, developments and related improvements, whether or not patentable; (b) United States patents, patent applications, divisionals, continuations, reissues, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, of any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (c) unregistered, United States registered or pending trademark, trade dress, service mark, service name, trade name, brand name, logo, domain name, or business symbol and any foreign or international equivalent of any of the foregoing; (d) work specifications, software (including object and source code listing) and artwork; (e) technical, scientific and other know-how and information, trade secrets, methods, processes, practices, formulas, designs, assembly procedures, specifications owned or used by Borrower; (f) copyrights; (g) work for hire; (h) customer and mailing lists; (i) any and all rights of the Borrower to the name “SYSOREX”, “SYSOREX USA” and “SYSOREX GOVERNMENT SERVICES” or any derivation thereof; (j) Borrower’s entire customer list and database and all assets used or useful by Borrower in the conduct of its Business over the internet or in any electronic medium; (k) all websites, IP addresses, URLs or domain names owned by Borrower; (l), the patents, trademarks, websites, IP addresses, URLs, domain names and such other items set forth on Section 8.21 to the Borrower’s Disclosure Schedule; and (m) all goodwill associated with the items described in (a) through and including (l).

**1.52 “Interest Rate”** means the Revolving Loan Interest Rate.

**1.53 “Intercreditor Agreement”** means collectively, the agreement, in form and substance acceptable to Lender, between Lender and each of (i) Hillair Capital whereby Hillair Capital, among other matters, subordinates its Lien in the Collateral to the Lien in favor of Lender, and (ii) Avnet, Inc., whereby among other matters, Avnet, Inc., among other matters, subordinates its Lien in the Collateral to the Lien in favor of Lender.

**1.54 “Inventory”** has the meaning ascribed to such term in the UCC, now owned or hereafter acquired by Borrower, wherever located, and, in any event, shall include, without limitation, all raw materials, work-in-process, finished and semi-finished Inventory including, without limitation, all materials, parts, components and supplies relating to the manufacture or assembly thereof, packaging and shipping supplies relating thereto, and all other inventory, merchandise, goods and other personal property now or hereafter owned by Borrower, which are held for sale, exchange or lease or are furnished or are to be furnished under a contract of service or an exchange arrangement or which constitute raw materials, work-in-process or materials used or consumed or to be used or consumed in Borrower’s Business, or the processing, packaging, delivery or shipping of the same, and all finished goods and the products of the foregoing, whatever form and wherever located; and all names or marks affixed to or to be affixed thereto for purposes of selling same by the seller, manufacturer, lessor or licensor thereof and all right, title and interest of Borrower therein and thereto.

**1.55 “Investment Property”** has the meaning ascribed to such term in the UCC.

**1.56 “Landlord Waiver and Access Agreements”** means the Landlord Waiver and Access Agreement with each landlord of Borrower as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced.

**1.57 “Lender”** has the meaning set forth in the introductory paragraph hereof.

**1.58 “Letter-of-Credit Rights”** means “letter-of-credit rights” as such term is defined in the UCC, including rights to payment or performance under a letter of credit, whether or not the beneficiary thereof has demanded or is entitled to demand payment or performance.

**1.59 “Lien” or “lien”** means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, lien (statutory or other, including, without limitation, liens imposed by any Governmental Authority or otherwise), charge or other encumbrance of any kind or nature whatsoever (including, without limitation, pursuant to any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction to evidence any of the foregoing) on personal or real property or fixtures.

**1.60 “Loans”** means the aggregate principal amount advanced to, made available to, or paid for the benefit of, Borrower as Revolving Loans as set forth in this Agreement and the other Loan Documents.

**1.61 “Loan Agreement Schedule”** means the Loan Agreement Schedule dated of even date herewith, signed by Borrower and delivered together with this Agreement, which Loan Agreement Schedule is incorporated herein by reference.

**1.62 “Loan Documents”** means this Agreement, the Loan Agreement Schedule, the Borrower’s Disclosure Schedule, the Revolving Loan Note, the Intercreditor Agreement, the Domain Name, URL and IP Address Assignment, the Landlord Waiver and Access Agreements, the Patent and Trademark Security Agreement and any and all other agreements, notes, documents, mortgages, financing statements, guaranties, intercreditor agreements, subordination agreements, certificates and such other documents and instruments executed and/or delivered at any time by Borrower or any other Person to Lender pursuant to and in connection with the Loans and this Agreement, as the same may be amended, modified, supplemented, renewed or extended from time to time.

**1.63 “Material Adverse Effect”** means a material adverse effect on (a) the Business, assets, liabilities, financial condition, results of operations or business prospects of Borrower, (b) the ability of Borrower to perform its obligations under any Loan Document to which it is a party, (c) the value of the Collateral or the rights of Lender therein, (d) the validity or enforceability of any of the Loan Documents, (e) the rights and remedies of Lender under any of such Loan Documents, or (f) the timely payment of the principal of or interest on the Loans or other amounts payable in connection therewith. All determinations of materiality shall be made by the Lender in its sole and absolute judgment acting in good faith.

**1.64 “Material Contract”** means any contract or other arrangement (other than Loan Documents), whether written or oral, to which Borrower is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could have a Material Adverse Effect.

**1.65 “Maturity Date”** means the earlier of (i) November 13, 2018, and (ii) the date Lender may exercise any of its remedies pursuant to the terms hereof.

**1.66 “Maximum Credit”** means up to Ten Million Dollars (\$10,000,000) subject to Availability, any Reserves and the Revolving Loan Commitment.

**1.67 “Note”** means the Revolving Loan Note.

**1.68 “Obligations”** means all obligations, liabilities, Loans and Indebtedness of every kind, nature and description owing by Borrower to Lender pursuant to the Loan Documents, including, without limitation, principal, interest, repurchase obligations, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether now existing or hereafter arising, whether arising before, during or after the Term or after the commencement of any case with respect to Borrower under the Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

**1.69 “Organizational Documents”** means, in the case of a corporation, its Articles of Incorporation, Certificate of Incorporation and By-Laws; in the case of a general partnership, its Articles of Partnership and any partnership agreement; in the case of a limited partnership, its Articles of Limited Partnership and any partnership agreement; in the case of a limited liability company, its Articles of Organization and Operating Agreement or Regulations, if any; in the case of a limited liability partnership, its Articles of Limited Liability Partnership; or alternatively, in each case, the legal equivalent thereof in the jurisdiction of its organization, together with all other formation or governing documents, schedules, exhibits, amendments, addendums, modifications, replacements, additions, or restatements of the foregoing, which are in effect.

**1.70 “Overadvance”** has the meaning as set forth in Section 1(c)(iv) of the Loan Agreement Schedule.

**1.71 “Patent and Trademark Security Agreement”** means the Patent and Trademark Security Agreement as originally executed or, if amended, modified, supplemented, renewed, extended or replaced from time to time, as so amended, modified, supplemented, renewed, extended or replaced, and all documents executed in connection with the Patent and Trademark Security Agreement.

**1.72 “Payment Intangibles”** has the meaning ascribed to such term in the UCC.

**1.73 “Permitted Actions”** means any or all of the following with respect to the Collateral: inspect; assemble; appraise; display; sever; remove; maintain; use or operate; prepare for sale or lease; process or repair; and/or lease, transfer and/or sell any or all of the Collateral by private sale or public disposition from any of the locations where any Collateral may be located.

**1.74 “Permitted Encumbrances”** means the Liens of Hillair Capital, the Liens of Avnet, Inc., and the Liens set forth on Section 9.9 of the Borrower’s Disclosure Schedule.

**1.75 “Permitted Indebtedness”** means (i) the unsecured Indebtedness consisting of accounts payable or trade payables of the Borrower incurred in the ordinary course of Business and repayable in accordance with customary trade practices, (ii) Indebtedness secured by Permitted Encumbrances, (iii) the Indebtedness owed to Western Alliance Bank which shall be repaid in full from the proceeds of the first Loan, and (iv) Indebtedness set forth on Section 10.4 of the Borrower’s Disclosure Schedule.

**1.76 “Person” or “person”** means, as applicable, any individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any Governmental Authorities.

**1.77 “Proceeds”** has the meaning ascribed to such term in the UCC and shall also include, but not be limited to, (a) any and all proceeds of any and all insurance policies (including, without limitation, life insurance, casualty insurance, business interruption insurance and credit insurance), indemnity, warranty or guaranty payable to Borrower from time to time with respect to any of the Collateral or otherwise, (b) any and all payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency or any other Person (whether or not acting under color of Governmental Authority) and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**1.78 “Promissory Note”** has the meaning ascribed to such term in the UCC.

**1.79 “Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance into the Environment.

**1.80 “Reserves”** means, as of any date of determination, such amounts as Lender may from time to time establish and revise in good faith reducing the amount of the Revolving Loan Commitment (a) to reflect events, conditions, contingencies or risks which, as determined by Lender in good faith, do or may adversely affect either (i) the Collateral or any other property which is security for the Obligations or its value, (ii) the assets, Business or prospects of Borrower, (iii) the security interests and other rights of Lender in the Collateral (including the enforceability, perfection and priority thereof), or (iv) Borrower’s ability to perform its Obligations under the Loan Documents; or (b) in respect of any state of facts which Lender determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

**1.81 “Responsible Officer”** means (i) for SG and SUSA, either the Chief Executive Officer or the Chief Financial Officer, and (ii) for SGS, either the President or the Chief Financial Officer.

**1.82 “Revolving Loan Commitment”** means, at any given time, the difference between (i) Availability and (ii) the sum of the Reserves related to the Revolving Loans plus outstanding Revolving Loans plus any other Obligations relating to the Revolving Loans.

**1.83 “Revolving Loan Note”** means the “Secured Promissory Note (Revolving Loans)” as may be amended, restated, modified or supplemented from time to time.

**1.84 “Revolving Loan Prepayment Fee”** has the meaning set forth in Section 4(b) of the Loan Agreement Schedule.

**1.85 “Revolving Loan Interest Rate”** is as set forth in Section 3(a) of the Loan Agreement Schedule.

**1.86 “Revolving Loans”** has the meaning as set forth in Section 1(c)(i) of the Loan Agreement Schedule.

**1.87 “SEC”** means the United States Securities and Exchange Commission.

**1.88 “Securities”** has the meaning ascribed to such term in the UCC.

**1.89 “Software”** has the meaning ascribed to such term in the UCC.

**1.90 “Subsidiary”** means, as to any Person, a corporation, limited liability company or other entity with respect to which more than fifty (50%) percent of the outstanding Equity Interests of each class having voting power is at the time owned by such Person or by one or more Subsidiaries of such Person or by such Person.

**1.91 “Tangible Chattel Paper”** has the meaning ascribed to such term in the UCC.

**1.92 “Tax” or “Taxes”** has the meaning set forth in Section 8.12(d).

**1.93 “Tax Deduction”** has the meaning set forth in Section 8.12(c).

**1.94 “Term”** has the meaning set forth in Section 4.1.

**1.95 “UCC”** means the Uniform Commercial Code as presently enacted in California (or any successor legislation thereto), and as the same may be amended from time to time; provided that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy under the Loan Documents is governed by the Uniform Commercial Code as in effect in a jurisdiction other than California, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

**1.96 Rules of Interpretation and Construction.** In this Agreement unless the context otherwise requires:

(a) All terms used herein which are defined in the UCC shall have the meanings given therein unless otherwise defined in this Agreement;

(b) Sections mentioned by number only are the respective Sections of this Agreement as so numbered;

(c) Words importing a particular gender shall mean and include the other gender and words importing the singular mean and include the plural and vice versa;

(d) Words importing persons shall mean and include firms, associations, partnerships (including limited partnerships), societies, trusts, corporations, limited liability companies or other legal entities, including public or governmental bodies, as well as natural persons;

(e) Each reference in this Agreement to a particular person shall be deemed to include a reference to such person's successors and permitted assigns;

(f) Any headings preceding the texts of any Section of this Agreement, and any table of contents or marginal notes appended to copies hereof are intended, solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect;

(g) If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions thereof;



(h) The terms “herein”, “hereunder”, “hereby”, “hereto”, and any similar terms as used in this Agreement refer to this Agreement; the term “heretofore” means before the date of execution of this Agreement; and the term “hereafter” shall mean after the date of execution of this Agreement;

(i) If any clause, provision or section of this Agreement shall be determined to be apparently contrary to or conflicting with any other clause, provision or section of this Agreement, then the clause, provision or section containing the more specific provisions shall control and govern with respect to such apparent conflict;

(j) Unless otherwise specified, (i) all accounting terms used herein or in any Loan Document shall be interpreted in accordance with GAAP, (ii) all accounting determinations and computations hereunder or thereunder shall be made in accordance with GAAP and (iii) all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP;

(k) An Event of Default that occurs shall exist or continue or be continuing unless such Event of Default is waived by Lender in accordance with the terms of this Agreement;

(l) The word “and” when used from time to time herein shall mean “or” or “and/or” if such meaning is expansive of the rights or interests of Lender in the given context;

(m) All references herein and in the other Loan Documents to times of day shall refer to Los Angeles, California time, unless otherwise specified to the contrary; and

(n) No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party or his or its counsel having, or being deemed to have, structured or drafted such provision.

## SECTION 2. LOANS

**2.1 Loans.** The terms and provisions of Section 1(c) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

**2.2 Maximum Credit.** The aggregate principal amount of the Loans shall not exceed the amount of the Maximum Credit.

**2.3 Use of Proceeds.** Borrower shall use the proceeds of the Loans solely for the purposes set forth in Section 1(d) of the Loan Agreement Schedule.

**2.4 Repayment.** Borrower shall repay the Loans and other Obligations in accordance with this Agreement and the Note.

**2.5 ACH.** In order to satisfy Borrower’s payment of amounts due under the Loans and all fees, expenses and charges with respect thereto that are due and payable under this Agreement or any other Loan Document, Borrower hereby irrevocably authorizes the Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system (“ACH”) to all deposit accounts maintained by Borrower, wherever located. At the request of the Lender, Borrower shall complete, execute and deliver to the institution set forth below (with a copy to the Lender) any ACH agreement, voided check, information and/or direction letter reasonably necessary to so instruct Borrower’s depository institution. Borrower (i) shall maintain in all respects this ACH arrangement; (ii) shall not change depository institutions without Lender’s prior written consent, and if consent is received, shall immediately execute similar ACH instruction(s), and (iii) waives any and all claims for loss or damage arising out of debits or credits to/from the depository institution, whether made properly or in error. Borrower has so communicated with and instructed the institution(s) set forth in Section 1(e) of the Loan Agreement Schedule.

### SECTION 3. INTEREST, FEES AND CHARGES

**3.1 Interest.** Interest on the Loans shall accrue as set forth in Sections 3(a) and 3(b) of the Loan Agreement Schedule.

**3.2 Fees.** Borrower shall pay Lender the fees set forth in Section 3(c) of the Loan Agreement Schedule. Such fees, other than the audit fees referenced therein, shall be deemed fully earned on the date hereof, shall be paid from Loan proceeds, and shall not be subject to rebate or proration for any reason.

**3.3 Fees and Expenses.** Borrower shall pay, on Lender's demand, all costs, expenses, filing fees and Taxes (other than taxes based on the income of Lender) payable in connection with the preparation, execution, delivery, recording, administration, collection, liquidation, defense and enforcement of the Loan Documents, Lender's rights in the Collateral, and all other existing and future agreements or documents contemplated herein or related hereto, including any amendments, waivers, supplements or consents which may now or hereafter be made or entered into in respect hereof, or in any way involving claims or defenses asserted by Lender or claims or defenses against Lender asserted by Borrower or any third party directly or indirectly arising out of or related to the relationship between Borrower and Lender, including, but not limited to the following, whether incurred before, during or after the Term or after the commencement of any case with respect to Borrower under the Bankruptcy Code or any similar or successor statute: (a) all costs and expenses of filing or recording (including Financing Statements and mortgage filing fees); (b) all title insurance and other insurance premiums, appraisal fees, fees incurred in connection with any environmental report and audit, survey and search fees and charges; (c) all fees relating to the wire transfer of loan proceeds and other funds and fees for returned checks; and (d) all costs, fees and disbursements of counsel to Lender. If any fees, costs or charges payable to Lender hereunder are not paid when due, such amounts shall be added to the Obligations and accrue interest at the Default Interest Rate until paid.

**3.4 Savings Clause.** It is intended that the Interest Rate and the Default Interest Rate shall never exceed the maximum rate, if any, which may be legally charged in the State of California for commercial loans made to corporations (the "**Maximum Rate**"). If the provisions for interest contained in the Revolving Loan Note would result in a rate higher than the Maximum Rate, the interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of Lender, returned to the Borrower.

#### SECTION 4. TERM

**4.1 Term.** This Agreement shall continue until all Obligations shall have been indefeasibly paid in full (the “**Term**”).

**4.2 Early Termination; Loan Prepayment Fees.**

- (a) Lender shall have the right to accelerate payment of the Obligations at any time upon or after the occurrence of an Event of Default.
- (b) Borrower may prepay the Loans as set forth in Sections 4(a) or 4(b) of the Loan Agreement Schedule.
- (c) Borrower shall prepay the Loans as set forth in Sections 4(c) and 4(d) of the Loan Agreement Schedule.

#### SECTION 5. COLLATERAL

**5.1 Security Interests in Borrower’s Assets.** As collateral security for the payment and performance of the Obligations, Borrower hereby grants and conveys to Lender a first priority continuing security interest in and Lien upon all now owned and hereafter acquired property and assets of Borrower and the Proceeds and products thereof including, without limitation, the property described in this Section 5.1 and all property of Borrower now or hereafter held or possessed by Lender (which property, assets and Proceeds, together with all other collateral security for the Obligations now or hereafter granted to or otherwise acquired by Lender, are referred to herein collectively as the “**Collateral**”):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Commercial Tort Claims;
- (d) Deposit Accounts;
- (e) Documents;
- (f) Electronic Chattel Paper;
- (g) Equipment;
- (h) Fixtures;
- (i) General Intangibles;
- (j) Goods;
- (k) Instruments;

- (l) Inventory;
- (m) Investment Property;
- (n) Letter-of-Credit Rights;
- (o) Payment Intangibles;
- (p) Promissory Notes;
- (q) Software;
- (r) Tangible Chattel Paper;
- (s) Securities (whether certificated or uncertificated);
- (t) warehouse receipts;
- (u) cash monies;
- (v) Tax and duty refunds;
- (w) Intellectual Property;

(x) All present and future books and records relating to any of the above including, without limitation, all present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any Account Debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Borrower with respect to any of the foregoing maintained with or by any other Person); and

(y) Any and all products and Proceeds of the foregoing in any form including, without limitation, all insurance claims, warranty claims and proceeds and claims against third parties for loss or destruction of or damage to any or the foregoing.

**5.2 Financing Statements.** Borrower hereby authorizes Lender to prepare and file Financing Statements with respect to the Collateral in form reasonably acceptable to Lender and its counsel, and hereby ratifies any actions taken by Lender prior to or after the date hereof in respect of the preparation and filing of Financing Statements. Borrower shall, at all times, do, make, execute, deliver and record, register or file all Financing Statements and other instruments, acts, pledges, leasehold or other mortgages, amendments, modifications, assignments and transfers (or cause the same to be done), and will deliver to Lender such instruments and/or documentation evidencing items of Collateral, as may be reasonably requested by Lender to better secure or perfect Lender's security interest in the Collateral or any Lien with respect thereto. Borrower acknowledges that it is not authorized to file any termination statement with respect to any Financing Statement in favor of Lender without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender. In addition, Borrower hereby authorizes Lender to record the Liens in favor of the Lender in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and the taking of any actions required under the laws of jurisdictions outside the United States with respect to Intellectual Property included in the Collateral.

**5.3 License Grant.** The terms of Section 5(b) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

**5.4 Representations, Warranties and Covenants Concerning the Collateral.** Borrower covenants, represents and warrants (each of which such covenants, representations and warranties shall survive execution and delivery of this Agreement and shall be deemed repeated upon the making of each request for a Revolving Loan and made as of the time of each and every Revolving Loan hereunder) as follows:

(a) (i) Borrower owns all of the Collateral free and clear of all Liens (including any claim of infringement) except those in Lender's favor and Permitted Encumbrances, and except for the Liens in favor of Western Alliance Bank which shall be released concurrently with the repayment of all Indebtedness owed to Western Alliance Bank by Borrower from the proceeds of the first Loans made hereunder, and (ii) none of the Collateral is subject to any agreement prohibiting the granting of a Lien or requiring notice of or consent to the granting of a Lien.

(b) It shall not encumber, mortgage, pledge, assign or grant any Lien upon any Collateral or any other assets to anyone other than the Lender and except for Permitted Encumbrances.

(c) The Liens granted pursuant to this Agreement, upon the filing of Financing Statements in respect of Borrower in favor of the Lender in the applicable filing office of the state of organization of Borrower, the recording of the Liens in favor of the Lender in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and the taking of any actions required under the laws of jurisdictions outside the United States with respect to Intellectual Property included in the Collateral which is created under such laws, constitute valid perfected first priority security interests in all of the Collateral in favor of the Lender, as security for the prompt and complete payment and performance of the Obligations, enforceable in accordance with the terms hereof.

(d) No security agreement, mortgage, deed of trust, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is or will be on file or of record in any public office, except those relating to the Liens of Lender and Permitted Encumbrances.

(e) It shall not dispose of any of the Collateral whether by sale, lease or otherwise except for (i) the sale of Inventory in the ordinary course of business and (ii) the disposition or transfer in the ordinary course of business of worn out or obsolete Equipment if consented to in advance in writing by Lender, in Lender's sole and absolute discretion, and then only to the extent that the proceeds of any such disposition are used to acquire replacement Equipment which is subject to the Lender's security interest or are used to repay the Obligations, as determined by Lender in its sole and absolute discretion.

(f) It shall defend the right, title and interest of the Lender in and to the Collateral against the claims and demands of all Persons whomsoever, and take such actions, including (i) all actions necessary to grant the Lender "control" of any Investment Property, Deposit Accounts, Letter- of-Credit Rights or Electronic Chattel Paper owned by it, with any agreements establishing control to be in form and substance satisfactory to the Lender, (ii) the prompt (but in no event later than five (5) Business Days following the Lender's request therefor) delivery to the Lender of all original Instruments, Chattel Paper, negotiable Documents and certificated Securities owned by it (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank), (iii) notification to third parties of the Lender's interest in Collateral at the Lender's request, and (iv) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower's and/or the Lender's interests in the Collateral.

(g) It shall promptly, and in any event within five (5) Business Days after the same is acquired by it, notify the Lender of any Commercial Tort Claim acquired by it and shall execute and deliver to the Lender such documents as Lender shall request to perfect, preserve or protect the Liens, rights and remedies of the Lender with respect to any such Commercial Tort Claim.

(h) It shall perform in a reasonable time all other steps requested by the Lender to create and maintain in the Lender's favor a valid perfected first Lien in all Collateral.

(i) It shall notify the Lender promptly, and in any event within three (3) Business Days after obtaining knowledge thereof (i) of any material delay in its performance of any of its obligations to any Account Debtor; (ii) of any assertion by any Account Debtor of any material claims, offsets or counterclaims; (iii) of any allowances, credits and/or monies granted by it to any Account Debtor; (iv) of all material adverse information relating to the financial condition of an Account Debtor; (v) of any material return of Inventory; and (vi) of any loss, damage or destruction of any of the Collateral .

(j) [Reserved]

(k) Section 5.4(k) of the Borrower's Disclosure Schedule lists all banks and other financial institutions at which it maintains deposits and/or other accounts, and such Schedule correctly identifies the name, address and telephone number of each such depository, the name in which the account is held, a description of the purpose of the account, and the complete account number. Borrower shall not establish any depository or other bank account with any financial institution (other than the accounts set forth on Section 5.4(k) of the Borrower's Disclosure Schedule) without providing Lender with written notification thereof and providing similar information related thereto.

(l) On the date hereof, its exact legal name (as indicated in the public record of its jurisdiction of organization), jurisdiction of organization, organizational identification number, if any, from the jurisdiction of organization, and the location of its chief executive office and all other offices or locations out of which it conducts business or operations, are specified on Section 5.4(l) of the Borrower's Disclosure Schedule. It has furnished to the Lender its Organizational Documents and long- form good standing certificate as of a date which is within thirty (30) days of the date hereof. It is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on Section 5.4(l) of the Borrower's Disclosure Schedule, the jurisdiction of its organization of formation is required to maintain a public record showing it to have been organized or formed. Except as specified on Section 5.4(l) of the Borrower's Disclosure Schedule, it has not changed its name, jurisdiction of organization, chief executive office or place of business or its corporate or company structure in any way (e.g., by merger, consolidation, change in form or otherwise) within the last five years and has not within the last five years become bound (whether as a result of merger or otherwise) as a grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

(m) Borrower shall maintain and keep all of its books and records concerning the Collateral at its executive offices listed in Section 5.4(l) of the Borrower's Disclosure Schedule.

(n) It will not, except upon delivery to the Lender of all additional Financing Statements and other documents and legal opinions requested by the Lender to maintain the validity, perfection and priority of the security interests provided for herein: (i) change its jurisdiction of organization or the location of its chief executive office from that referred to in Section 5.4(l) of the Borrower's Disclosure Schedule; or (ii) change its name, identity or organizational structure.

(o) None of the Collateral is subject to any prohibition against encumbering, pledging, hypothecating or assigning the same or requires notice or consent to Borrower's doing of the same.

(p) (i) All Accounts represent complete bona fide transactions which require no further act under any circumstances on its part to make such Accounts payable by the Account Debtors,

(ii) no Account is subject to any present, future contingent offsets or counterclaims of which Borrower is aware or should have been or be aware, and (iii) no Account represents bill and hold sales, consignment sales, guaranteed sales, sale or return or other similar understandings or obligations of any Affiliate or Subsidiary of the applicable Borrower. It has not made, nor will it make, any agreement with any Account Debtor for any extension of time for the payment of any Account, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except for (i) extension of payment terms not greater than ninety (90) days from the invoice date of each such Account, and (ii) discounts not greater than two and one-half percent (2.5%) of the invoice amount for each Account, and as previously disclosed to the Lender in writing.

(q) The additional representations, warranties and covenants set forth in Section 5(c) of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

## SECTION 6. CONDITIONS TO MAKING INITIAL LOANS

The obligation of Lender to make the initial Loans shall be subject to the satisfaction or waiver by Lender, prior thereto or concurrently therewith, of each of the following conditions precedent:

**6.1 Loan Documents.** Each of the Loan Documents shall have been duly and properly authorized, executed and delivered by Borrower and the other parties thereto and shall be in full force and effect as of the date hereof.

**6.2 Representations and Warranties.** Each of the representations and warranties made by or on behalf of Borrower to Lender in this Agreement and in other Loan Documents shall be true and correct in all respects as of the date hereof, provided that any such representation or warranty that is qualified by materiality shall be true and correct in all material respects as of the date hereof.

**6.3 Certified Copies of Formation Documents.** Lender shall have received from Borrower, certified by the Responsible Officer to be true and complete on and as of a date which is not more than ten (10) Business Days prior to the date hereof, a copy of each of the Organizational Documents of Borrower in effect on such date of certification.

**6.4 Proof of Action.** Lender shall have received from Borrower a copy, certified by the Responsible Officer to be true and complete on and as of the date hereof, of the records of all corporate or limited liability company action taken by Borrower to authorize (a) its execution and delivery of each of the Loan Documents to which it is or is to become a party as contemplated or required by this Agreement, (b) its performance of all of its agreements and obligations under each of such documents, and (c) the incurring of the Obligations contemplated by this Agreement.

**6.5 Legal Opinion.** Lender shall have received a written legal opinion, addressed to Lender, dated the date hereof, from counsel for Borrower. Such legal opinion shall be acceptable to Lender and its counsel.

**6.6 Collateral.** Lender shall have obtained a first priority, perfected security interest in the Collateral.

**6.7 Insurance.** Lender shall have received evidence of insurance, additional insured and loss payee endorsements required hereunder and under the other Loan Documents, in form and substance satisfactory to Lender, and certificates of insurance policies and/or endorsements naming Lender as additional insured and loss payee.

**6.8 Validity of Collateral Representation.** Lender shall have received a statement by the appropriate officers of Borrower which shall represent and certify the validity of the Collateral.

**6.9 ACH Agreement.** Lender shall have received from Borrower an agreement executed by Borrower which irrevocably authorizes Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system to all deposit accounts maintained by Borrower, wherever located.

**6.10 IRS Form 8821.** Lender shall have received from Borrower an executed Form 8821 to be submitted to the Internal Revenue Service which shall grant Lender access to Borrower's Tax information.

**6.11 IRS Form W-9.** Lender shall have received from Borrower an executed Form W-9 to be submitted to the Internal Revenue Service which shall allow Lender to verify Borrower's tax identification number(s).

**6.12 Pay Proceeds Letter.** Borrower shall have delivered to Lender a pay proceeds letter with respect to the disbursement of the proceeds of the initial Loans in form and substance satisfactory to Lender, which letter shall provide for, among other things, the payment or reimbursement of all costs and expenses incurred by Lender in connection with this Agreement and the other Loan Documents, including, without limitation, Lender's due diligence expenses and legal fees.

**6.13 No Event of Default.** No event shall have occurred on or prior to the date of each initial Loan by Lender hereunder and be continuing on the date of each such initial Loan by Lender hereunder, and no condition shall exist on the date of each Loan by Lender hereunder, which constitutes an Event of Default or which would, with notice or the lapse of time, or both, constitute an Event of Default under this Agreement or any other Loan Document; and, Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender.



**6.14 Additional Deliveries.** Borrower shall have delivered to Lender such other documents and instruments reasonably requested by Lender, including, without limitation, the documents set forth on Section 6 of the Loan Agreement Schedule.

#### SECTION 7. CONDITIONS TO MAKING ALL LOANS

If it is contemplated in this Agreement that more than one advance will be made by Lender under Section 2.1 hereof, the obligations of Lender to make all Loans hereunder shall be subject to the satisfaction or waiver by Lender, prior thereto or concurrently therewith, of each of the conditions set forth in Section 6 and, in addition, all of the following conditions precedent:

**7.1 Applications and Compliance.** The application for such Loans shall have been made by Borrower to Lender in accordance with the applicable provisions of this Agreement and in compliance with all provisions of this Agreement.

**7.2 Representations and Warranties.** Each of the representations and warranties made by or on behalf of Borrower to Lender in this Agreement or in other Loan Documents shall have been true and correct in all material respects when made (provided that any such representation or warranty that is qualified as to materiality shall be true and correct in all respects), shall, for all purposes of this Agreement, be deemed to be repeated on and as of the date of each Loan by Lender hereunder and shall be true and correct in all respects on and as of each such date, except to the extent that any of such representations and warranties relate, by the express terms thereof, solely to a date prior to the date of each Loan by Lender hereunder, and Lender shall have received a certification from a Responsible Officer of Borrower with respect to the foregoing in form and substance satisfactory to Lender.

**7.3 Performance, etc.** Borrower shall have duly and properly performed, complied with and observed each of its covenants, agreements and obligations contained in this Agreement and in any other Loan Documents on the date of each Loan by Lender hereunder, and Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender. No event shall have occurred on or prior to the date of each Loan by Lender hereunder and be continuing on the date of each Loan by Lender hereunder, and no condition shall exist on the date of each Loan by Lender hereunder, which constitutes an Event of Default or which would, with notice or the lapse of time, or both, constitute an Event of Default under this Agreement or any other Loan Document, and Lender shall have received a certification from a Responsible Officer with respect to the foregoing in form and substance satisfactory to Lender.

## SECTION 8. REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender, knowing and intending that Lender shall rely thereon in making the Loans contemplated hereby (each of which representations and warranties shall be continuing unless expressly made in relation only to a specific date), that:

### 8.1 Existence.

(a) Borrower (i) is a corporation or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (ii) is in good standing in all other jurisdictions in which it is required to be qualified to do business as a foreign corporation or limited liability company, (iii) has all requisite corporate or limited liability company power and authority and full legal right to own or to hold under lease its properties and to carry on the business as presently engaged and (iv) has been issued all required federal, state and local licenses, certificates or permits necessary, required or appropriate to the operation of its Business.

(b) Borrower has corporate or limited liability company power and authority and has full legal rights to enter into each of the Loan Documents to which it is a party, and to perform, observe and comply with all of its agreements and obligations under each of such documents.

**8.2 No Violation, etc.** The execution and delivery by Borrower of the Loan Documents to which Borrower is a party, the performance by Borrower of all of its agreements and obligations under each of such documents, and the incurring by Borrower of all of the Obligations contemplated by this Agreement, have been duly authorized by all necessary corporate or limited liability company actions on the part of Borrower and, if required, its shareholders, and do not and will not (a) contravene any provision of Borrower's Organizational Documents or this Agreement (each as from time to time in effect), (b) conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any Lien upon any of the property of Borrower under, any agreement, mortgage or other instrument to which Borrower is or may become a party other than the agreements, mortgages or other instruments with or in favor of Western Alliance Bank with respect to the Indebtedness to be repaid to Western Alliance Bank from the proceeds of the first Loans made to Borrower hereunder, (c) violate or contravene any provision of any law, regulation, order, ruling or interpretation thereunder or any decree, order or judgment or any court or governmental or regulatory authority, bureau, agency or official (all as from time to time in effect and applicable to such entity), (d) other than waivers required from Borrower's landlords, require any waivers, consents or approvals by any third party, including any creditors or trustees for creditors of Borrower, or (e) require any approval, consent, order, authorization, or license by, or giving notice to, or taking any other action with respect to, any Governmental Authority.

**8.3 Binding Effect of Documents, etc.** Borrower has duly executed and delivered each of the Loan Documents to which Borrower is a party, and each of the Loan Documents is valid, binding and in full force and effect. The agreements and obligations of Borrower as contained in each of the Loan Documents constitute, or upon execution and delivery thereof will constitute, legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, subject, as to the enforcement of remedies only, to limitations imposed by federal and state laws regarding bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and remedies generally, and by general principles of law and equity.

#### **8.4 No Events of Default.**

(a) No Event of Default has occurred and is continuing and no event has occurred and is continuing and no condition exists that would, with notice or the lapse of time, or both, constitute an Event of Default.

(b) Borrower is not in default under any Material Contract to which Borrower is a party or by which Borrower or any property of Borrower is bound.

(c) Borrower's execution, delivery and performance of and compliance with this Agreement and the other Loan Documents will not, with or without the passage of time or giving of notice, result in any violation of law, or be in conflict with or constitute a default under any term or provision, or result in the creation of any Lien upon any of Borrower's properties or assets or the suspension, revocation, impairment, forfeiture or nonrenewal, of any permit, license, authorization or approval applicable to Borrower, or any of its businesses or operations or any of its assets or properties.

**8.5 No Governmental Consent Necessary.** No consent or approval of, giving of notice to, registration with or taking of any other action in respect of, any Governmental Authority is required with respect to the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents to which it is a party.

**8.6 No Proceedings.** Except as set forth on Section 8.6 of the Borrower's Disclosure Schedule, there are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower in any court or before any Governmental Authority.

**8.7 No Violations of Laws; Licenses and Permits.** Borrower has conducted, and is conducting, its Business, so as to comply in all material respects with all applicable federal, state, county and municipal statutes and regulations. Neither Borrower nor any officer, director, manager, member or shareholder of Borrower is charged with, or so far as is known by Borrower, is under investigation with respect to, any violation of any such statutes, regulations or orders, which could have a Material Adverse Effect. Borrower has been issued all required federal, state and local licenses, certificates or permits required for the operation of its business.

**8.8 Use of Proceeds of the Loans.** Proceeds from the Loans shall be used only for those purposes set forth in this Agreement. No part of the proceeds of the Loans shall be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of purchasing or carrying or trading in any stock under such circumstances as to involve Borrower in a violation of any statute or regulation. In particular, without limitation of the foregoing, no part of the proceeds from the Loans is intended to be used to acquire any publicly held stock of any kind.

#### **8.9 Financial Statements; Indebtedness.**

(a) The balance sheet of Borrower as of September 30, 2016, and the related statement of operations, stockholders' equity and cash flows (together with the related notes) for the Fiscal Year ended December 31, 2015, and the balance sheet of Borrower and the related statement of operations, stockholders' or members' equity and cash flows (together with the related notes) for the 9- month period ended September 30, 2016 (collectively, the "**Financial Statements**") fairly present, as of the date thereof, the financial position of Borrower, and the results of its operations, cash flows and stockholders' equity in all material aspects.

(b) Except as shown on the most recent Financial Statements, (i) Borrower has no Indebtedness as of the date hereof which would adversely affect the financial condition of Borrower or the Collateral, and (ii) Borrower has no liabilities, contingent or otherwise, except those which, individually or in the aggregate, are not material to the financial condition or operating results of Borrower.

**8.10 Changes in Financial Condition.** Since the Balance Sheet Date, there has been no material adverse change and no material adverse development in the Business, properties, operations, condition (financial or otherwise), results of operations or prospects of Borrower. Since the Balance Sheet Date, Borrower has not (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) had capital expenditures outside of the ordinary course of business, (iv) engaged in any transaction with any Affiliate or (v) engaged in any other transaction outside of the ordinary course of business.

**8.11 Equipment.** Borrower shall keep and maintain its Equipment in good operating condition, and shall make all necessary repairs and replacements thereof so that the value and operating efficiency shall at all times be maintained and preserved.

**8.12 Taxes and Assessments.**

(a) Borrower has paid and discharged when due all Taxes, assessments and other governmental charges which may lawfully be levied or assessed upon its income and profits, or upon all or any portion of any property belonging to it, whether real, personal or mixed, to the extent that such Taxes, assessment and other charges have become due. Borrower has filed all Tax returns, federal, state and local, and all related information, required to be filed by it.

(b) Borrower shall make all payments to be made by it hereunder without any Tax Deduction. If a Tax Deduction is required, the amount of the payment due from Borrower to Lender shall be increased and grossed up to an amount equal to the payment which would have been due if no Tax Deduction had been required. If a Tax Deduction is required, Borrower shall promptly make any payment required in connection with that Tax Deduction.

(c) “**Tax Deduction**” means a deduction or withholding for or on account of a Tax from a payment received by Lender under a Loan Document.

(d) “**Tax**” or “**Taxes**” means any tax, levy, impost, duty or other charge or withholding of a similar nature, including any income, franchise, stamp, documentary, excise or property tax, charge or levy (in each case, including any related penalty or interest).

**8.13 ERISA.** Borrower is in compliance in all material respects with the applicable provisions of ERISA and all regulations issued thereunder by the United States Treasury Department, the Department of Labor and the Pension Benefit Guaranty Corporation.

#### 8.14 Environmental Matters.

(a) Borrower has duly complied with, and its facilities, assets, property, leaseholds and Equipment are in material compliance in all respects with, the provisions of all Environmental Laws.

(b) Borrower has been issued all required federal, state and local licenses, certificates or permits required under Environmental Laws for the operation of its Business.

#### 8.15 United States Anti-Terrorism Laws; Holding Company Status.

(a) In this Section 8.15:

“**Anti-Terrorism Law**” means each of: (i) Executive Order No. 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the “**Executive Order**”); (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act); (iii) the Money Laundering Control Act of 1986, Public Law 99-570; and (iv) any similar law enacted in the United States of America subsequent to December 31, 2004.

“**holding company**” has the meaning given to it in the United States Public Utility Holding Company Act of 1935, and any successor legislation and rules and regulations promulgated thereunder.

“**investment company**” has the meaning given to it in the United States Investment Company Act of 1940.

“**public utility**” has the meaning given to it in the United States Federal Power Act of 1920.

“**Restricted Party**” means any person listed: (i) in the Annex to the Executive Order; (ii) on the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury; or (iii) in any successor list to either of the foregoing.

(b) Borrower is not (i) a holding company or subject to regulation under the United States Public Utility Holding Company Act of 1935; (ii) a public utility or subject to regulation under the United States Federal Power Act of 1920; (iii) required to be registered as an investment company or subject to regulation under the United States Investment Company Act of 1940; or (iv) subject to regulation under any United States Federal or State law or regulation that limits its ability to incur or guarantee Indebtedness.

(c) To the best of Borrower’s knowledge, Borrower (i) is not, and is not controlled by, a Restricted Party; (ii) has not received funds or other property from a Restricted Party; and (iii) is not in breach of and is not the subject of any action or investigation under any Anti-Terrorism Law.

(d) Borrower has taken reasonable measures to ensure compliance with the Anti- Terrorism Laws.

**8.16 Customers and Vendors.** There are no disputes with any customers, suppliers, manufacturers, vendors and independent contractors of Borrower in excess of \$5,000 in the aggregate with any such party.

**8.17 Representations, Warranties and Covenants Concerning the Collateral.** The representations, warranties and covenants of Borrower set forth in Section 5.4 hereof are incorporated in this Section 8.17 by reference.

**8.18 Books and Records.** Borrower maintains its chief executive office and its books and records related to the Collateral at its address set forth in Section 5.4(l) of the Borrower's Disclosure Schedule.

**8.19 Ownership and Control.** All of the issued and outstanding Equity Interests of Borrower are owned beneficially and of record according to the percentages set forth in Section 8.19 of the Borrower's Disclosure Schedule.

**8.20 Changes.** Since the Balance Sheet Date, except as disclosed in Section 8.20 of the Borrower's Disclosure Schedule, with respect to Borrower, there has not been:

(a) any change in its Business, assets, liabilities, condition (financial or otherwise), properties, operations or prospects, which, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect;

(b) any resignation or termination of any of its officers, key employees or groups of employees;

(c) any change, except in the ordinary course of business, in its contingent obligations by way of guaranty, endorsement, indemnity, warranty or otherwise;

(d) any damage, destruction or loss, whether or not covered by insurance, which has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(e) any waiver by it of a valuable right or of a material debt owed to it;

(f) any direct or indirect loans made by it to any of its stockholders, managers, employees, officers or directors, other than advances made in the ordinary course of business;

(g) any material change in any compensation arrangement or agreement with any employee, manager, officer, director or equity holder;

(h) any declaration or payment of any dividend or other distribution of its assets;

(i) any labor organization activity related to it;

(j) any debt, obligation or liability incurred, assumed or guaranteed by it, except those for immaterial amounts and for current liabilities incurred in the ordinary course of business;

(k) any sale, assignment, transfer, abandonment or other disposition of any Collateral other than Inventory in the ordinary course of business;

(l) any change in any Material Contract to which it is a party or by which it is bound which, either individually or in the aggregate, has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(m) any other event or condition of any character that, either individually or in the aggregate, has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(n) any arrangement or commitment by it to do any of the acts described in subsection (a) through (m) of this Section 8.20.

#### **8.21 Intellectual Property.**

(a) (1) Borrower holds all Intellectual Property that it owns free and clear of all Liens other than Permitted Encumbrances and the Liens in favor of Western Alliance Bank which will be released concurrently with the payment in full of the Indebtedness owed to Western Alliance Bank from the proceeds of the first Loans made hereunder to Borrower, and restrictions on use or transfer, whether or not recorded, and has sole title to and ownership of or has the full, exclusive (subject to the rights of its licensees) right to use in its field of business such Intellectual Property; and Borrower holds all Intellectual Property that it uses but does not own under valid licenses or sub-licenses from others; (2) the use of the Intellectual Property by Borrower does not violate or infringe on the rights of any other Person; (3) Borrower has not received any notice of any conflict between the asserted rights of others and Borrower with respect to any Intellectual Property; (4) Borrower has used its commercially reasonable best efforts to protect its rights in and to all Intellectual Property; (5) Borrower is in compliance with all material terms and conditions of its agreements relating to the Intellectual Property; (6) Borrower is not, and since the Balance Sheet Date has not been, a defendant in any action, suit, investigation or proceeding relating to infringement or misappropriation by Borrower of any Intellectual Property nor has Borrower been notified of any alleged claim of infringement or misappropriation by Borrower of any Intellectual Property; (7) to the knowledge of Borrower, none of the products or services Borrower is researching, developing, proposes to research and develop, make, have made, use, or sell, infringes or misappropriates any Intellectual Property right of any third party; and (8) to Borrower's knowledge, none of the material processes and formulae, research and development results and other know-how relating to Borrower's Business, the value of which to Borrower is contingent upon maintenance of the confidentiality thereof, has been disclosed to any Person other than Persons bound by written confidentiality agreements.

(b) Section 8.21 of the Borrower's Disclosure Schedule sets forth a true and complete list of (i) all Intellectual Property owned or claimed by Borrower, together with any and all registration or application numbers for any Intellectual Property filed or issued by any Intellectual Property registry (and in the case of any and all domain names registered by or on behalf of Borrower, the name of the registrar(s) thereof) and (ii) all Intellectual Property licenses which are material to the Borrower's Business.

**8.22 Employees.** Borrower has no collective bargaining agreements with any of its employees. There is no labor union organizing activity pending or, to Borrower's knowledge, threatened with respect to Borrower. Except as set forth in Section 8.22 of the Borrower's Disclosure Schedule, Borrower is not a party to or bound by any currently effective deferred compensation arrangement, bonus plan, incentive plan, profit sharing plan, retirement agreement or other employee compensation plan or agreement. To Borrower's knowledge, no employee of Borrower, nor any consultant with whom Borrower has contracted, is in violation of any material term of any employment contract or any other contract relating to the right of any such individual to be employed by, or to contract with, Borrower or to receive any benefits; and, to Borrower's knowledge, the continued employment by Borrower of its present employees, and the performance of Borrower's contracts with its independent contractors, will not result in any such violation. Except for employees who have a current effective employment agreement with Borrower, as set forth in Section 8.22 of the Borrower's Disclosure Schedule, no employee of Borrower has been granted the right to continued employment by Borrower or to any material compensation following termination of employment with Borrower. Borrower is not aware that any officer, director, manager, partner, key employee or group of employees intends to terminate his, her or their employment with Borrower, nor does Borrower have a present intention to terminate any of the same.

**8.23 Tax Status.** Borrower (i) has made or filed all federal and state income and all other Tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all Taxes and other governmental assessments and charges that are shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which it has set aside on its books a provision in the amount of such Taxes being contested in good faith and (iii) has set aside on its books provisions reasonably adequate for the payment of all Taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid Taxes payable by Borrower claimed to be due by the taxing authority of any jurisdiction, and the officers of the Borrower know of no basis for any such claim.

**8.24 Representations and Warranties: True, Accurate and Complete** None of the representations, certificates, reports, warranties or statements now or hereafter made or delivered to Lender pursuant hereto or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances in which they are made, not misleading.

**8.25 Fees; Brokers; Finders.** There are no fees, commissions or other compensation due to any third party acting on behalf of or at the direction of Borrower in connection with the Loan Documents, except as set forth on Section 8.25 of the Borrower's Disclosure Schedule. All negotiations relative to the Loan Documents, and the transactions contemplated thereby, have been carried on by the Borrower with the Lender without the intervention of any other person or entity acting on behalf of the Borrower, and in such manner as not to give rise to any claim against the Borrower or the Lender for any finder's fee, brokerage commission or like payment due to any third party acting on behalf of or at the direction of Borrower, and if any such fee, commission or payment is payable, it shall be the sole responsibility of the Borrower and the Borrower shall pay, and indemnify the Lender for, the same.



## SECTION 9. AFFIRMATIVE COVENANTS

Until the indefeasible payment and satisfaction in full of all Obligations and the termination of this Agreement, Borrower hereby covenants and agrees as follows:

**9.1 Notify Lender.** Borrower shall promptly, and in any event within three (3) Business Days of any determining of the following, inform Lender (a) if any one or more of the representations and warranties made by Borrower in this Agreement or in any document related hereto shall no longer be entirely true, accurate and complete in any respect; (b) of any Equipment which is not in good order and repair, and in running and marketable condition, or of any Equipment that is removed or is missing from the Borrower's Premises; (c) of all material adverse information relating to the financial condition of Borrower; (d) of any material return of goods; (e) of any loss, damage or destruction of any of the Collateral; (f) the occurrence of an Event of Default or a Material Adverse Effect; and (g) of any other events or occurrences set forth in Section 7(a) of the Loan Agreement Schedule.

**9.2 Change in Ownership, Directors, Managers or Officers.** Borrower shall promptly notify Lender of any changes in Borrower's managers, directors and/or officers and in the ownership of Borrower.

**9.3 Pay Taxes and Liabilities; Comply with Agreement** Borrower shall promptly pay, when due, or otherwise discharge, all Indebtedness, sums and liabilities of any kind now or hereafter owing by Borrower to its employees as wages or salaries or to Lender and Governmental Authorities however created, incurred, evidenced, acquired, arising or payable, including, without limitation, income Taxes, excise Taxes, sales and use Taxes, license fees, and all other Taxes with respect to any of the Collateral, or any wages or salaries paid by Borrower or otherwise, unless the validity of which are being contested in good faith by Borrower by appropriate proceedings, provided that Borrower shall have maintained reasonably adequate reserves and accrued the estimated liability on Borrower's balance sheet for the payment of same.

**9.4 Observe Covenants, etc.** Borrower shall observe, perform and comply with the covenants, terms and conditions of this Agreement and the other Loan Documents.

**9.5 Maintain Corporate Existence and Qualifications.** Borrower shall maintain and preserve in full force and effect, its corporate existence and rights, franchises, licenses and qualifications necessary to continue its Business, and comply with all applicable statutes, rules and regulations pertaining to the operation, conduct and maintenance of its existence and Business including, without limitation, all federal, state and local laws relating to benefit plans, environmental safety, or health matters, and hazardous or liquid waste or chemicals or other liquids (including use, sale, transport and disposal thereof).

**9.6 Financial Reports and Other Information.** Borrower shall deliver or cause to be delivered to Lender:

(a) **Reports.** The financial reports and other information set forth in Section 7(b) of the Loan Agreement Schedule, on the dates set forth therein. The Borrower shall further comply with all its covenants set forth therein.

**(b) Notice of Litigation, Judgments, Environmental, Health or Safety Complaints.**

(i) Within five (5) Business Days after commencement or receipt by Borrower, written notice to Lender of all litigation and of all proceedings involving the Borrower or any of its assets, together with a copy of all pleadings and demands;

(ii) Within five (5) Business Days thereafter, written notice to Lender of the entry of any judgment or the institution of any lawsuit or of other legal or equitable proceedings or the assertion of any cross claim or counterclaim seeking monetary damages from Borrower; and

(iii) Within five (5) Business Days thereafter, notice or copies if written of all claims, complaints, orders, citations or notices, whether formal or informal, written or oral, from a governmental body or private person or entity, relating to air emissions, water discharge, noise emission, solid or liquid waste disposal, hazardous waste or materials, or any other environmental, health or safety matter, which adversely affect Borrower. Such notices shall include, among other information, the name of the party who filed the claim, the potential amount of the claim, and the nature of the claim.

**(c) Other Information.** Upon demand,

(i) Certificates of insurance for all policies of insurance to be maintained by Borrower pursuant hereto;

(ii) All information received by Borrower affecting the financial status or condition of any Account Debtor or the payment of any Account, including but not limited to, invoices, original orders, shipping and delivery receipts; and

(iii) An estoppel certificate executed by the Responsible Officer of Borrower indicating that there then exists no Event of Default and no event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

**(d) Additional Information.** From time to time, such other information as Lender may reasonably request, including financial projections and cash flow analysis.

**9.7 Comply with Laws.** Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, compliance with which is necessary to maintain its corporate existence or the conduct of its Business or non-compliance with which would adversely affect in any respect its ability to perform its obligations or any security given to secure its obligations.

**9.8 Insurance Required.**

(a) Borrower shall cause to be maintained, in full force and effect on all Collateral, insurance in such amounts against such risks as is reasonably satisfactory to Lender, including, but without limitation, business interruption, liability, fire, theft, burglary, pilferage, vandalism, malicious mischief, loss in transit, and hazard insurance and, if as of the date hereof, any of the leased real property of Borrower is in an area that has been identified by the Secretary of Housing and Urban Development as having special flood or mudslide hazards, and on which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, then Borrower shall maintain flood insurance. Said policy or policies shall:

(i) Be in a form and with insurers which are satisfactory to Lender;

(ii) Be for such risks, and for such insured values as Lender or its assigns may reasonably require in order to replace the property in the event of actual or constructive total loss;

(iii) Designate Lender as additional insured and loss payee as Lender's interest may from time to time appear;

(iv) Contain a "breach of warranty clause" whereby the insurer agrees that a breach of the insuring conditions or any negligence by Borrower or any other person shall not invalidate the insurance as to Lender and its assignee;

(v) Provide that they may not be canceled or altered without thirty (30) days prior written notice to Lender; and

(vi) Upon demand, be delivered to Lender.

(b) Borrower shall obtain such additional insurance as Lender may reasonably require.

(c) Borrower shall, in the event of loss or damage of any Collateral, forthwith notify Lender and file proofs of loss with the appropriate insurer. Borrower hereby authorizes Lender to endorse any checks or drafts constituting insurance proceeds.

(d) Borrower shall forthwith upon receipt of insurance proceeds endorse and deliver the same to Lender.

(e) In no event shall Lender be required either to (i) ascertain the existence of or examine any insurance policy or (ii) advise Borrower in the event such insurance coverage shall not comply with the requirements of this Agreement.

**9.9 Condition of Collateral; No Liens.** Borrower shall (i) maintain all Collateral in good condition and repair at all times, (ii) preserve the Collateral against any loss, damage, or destruction of any nature, (iii) keep the Collateral free and clear of any Liens, except for the Liens of Lender and Permitted Encumbrances set forth on Section 9.9 of the Borrower's Disclosure Schedule, and shall not permit Collateral to become a fixture to real estate or accessions to other personal property.

**9.10 Payment of Proceeds.** Borrower shall forthwith upon receipt of all Proceeds of Collateral, pay such Proceeds (insurance or otherwise) up to the amount of the then-outstanding Obligations over to Lender for application against the Obligations in such order and manner as Lender may elect.

**9.11 Records.** Borrower shall at all times keep accurate and complete records of its operations, of the Collateral and the status of each Account, which records shall be maintained at its executive offices as set forth on Section 5.4(l) of the Borrower's Disclosure Schedule.

**9.12 Pay Obligations.** Borrower shall promptly and timely pay all Obligations when due in accordance with the Loan Documents.

**9.13 Delivery of Documents.** If any Proceeds of Accounts shall include, or any of the Accounts shall be evidenced by, notes, trade acceptances or instruments or documents, or if any Inventory is covered by documents of title or chattel paper, whether or not negotiable, then Borrower waives protest regardless of the form of the endorsement. If Borrower fails to endorse any instrument or document, Lender is authorized to endorse it on Borrower's behalf.

**9.14 United States Contracts.** Section 7(c) of the Loan Agreement Schedule is hereby incorporated by reference and made a part hereof.

**9.15 Further Assurances.** Borrower shall at any time or from time to time upon request of Lender take such steps and execute and deliver such Financing Statements and other documents all in the form of substance reasonably satisfactory to Lender relating to the creation, validity or perfection of the security interests provided for herein, under the UCC or which are reasonably necessary to effectuate the purposes and provisions of this Agreement. Borrower shall defend the right, title and interest of Lender in and to the Collateral against the claims and demands of all Persons whomsoever, and take such actions, including (i) all actions necessary to grant Lender "control" of any Investment Property, Deposit Accounts, Letter-of-Credit Rights or Electronic Chattel Paper owned by it, with any agreements establishing control to be in form and substance satisfactory to Lender, (ii) the prompt (but in no event later than five (5) Business Days following Lender's request therefor) delivery to Lender of all original Instruments, Chattel Paper, negotiable Documents and certificated Securities owned by it (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank), (iii) notification of Lender's interest in Collateral at Lender's request, and (iv) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower's and/or Lender's respective and several interests in the Collateral.

**9.16 Indemnification.** Borrower shall indemnify, protect, defend and hold Lender, and Lender's members, managers, directors, officers, employees, agents, attorneys, and representatives (each, an "**Indemnified Party**") harmless from and against any and all claims, demands, suits, judgments, losses, damages, liabilities, expenses, costs and fees (including reasonable attorneys' fees) and liabilities of any kind or nature relating to, resulting from, arising out of or in connection with the Loan Documents and the transactions contemplated by the Loan Documents; provided that such indemnity shall not, as to any Indemnified Party, be available to the extent such losses, claims damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final non-appealable judgment to have resulted by the gross negligence or willful misconduct of such Indemnified Party. If a claim or action shall be brought against an Indemnified Party based upon any of the above, the Indemnified Party shall select counsel to defend such claim or action. Borrower shall be responsible for payment of all costs and expenses and reasonable attorneys' fees of such counsel selected by the Indemnified Party and all costs and expenses incurred by the Indemnified Party and the Indemnified Party and counsel selected by Indemnified Party shall defend, compromise, settle or pursue such claim or action at Borrower's expense, subject in each case to the proviso in the first sentence of this Section 9.16. The Indemnified Party and counsel selected by the Indemnified Party shall defend, compromise, settle or pursue such claim or action at Borrower's expense. The provisions of this Section shall survive the termination of this Agreement and the final repayment of the Obligations.

**9.17 Additional Covenants.** The terms and provisions of Section 8 of the Loan Agreement Schedule are incorporated herein by reference and made a part hereof.

**9.18 Name Changes; Location Changes.**

(a) Borrower shall promptly notify Lender of any changes in the name of Borrower or if Borrower is known by or conducting business under any names other than those set forth in this Agreement.

(b) Borrower shall deliver not less than thirty (30) days prior written notice to Lender if Borrower intends to conduct any of its Business or operations at or out of offices or locations other than those set forth in Section 5.4(l) of the Borrower's Disclosure Schedule, or if it changes the location of its chief executive office or the address at which it maintains its books and records.

**SECTION 10. NEGATIVE COVENANTS**

Until payment and satisfaction in full of all Obligations and the termination of this Agreement, Borrower hereby covenants and agrees as follows:

**10.1 [Reserved]**

**10.2 Disposition of Assets or Collateral.** Borrower will not sell, lease, transfer, convey, or otherwise dispose of any or all of its assets or Collateral, other than the sale of Inventory in the ordinary course of business or the sale of Equipment in accordance with Lender's prior written consent under Section 5.4(e) hereof.

**10.3 Other Liens.** Borrower will not incur, create or permit to exist any Lien on any of its property or assets, whether now owned or hereafter acquired, except for (a) those Liens in favor of Lender created by this Agreement and the other Loan Documents; and (b) the Permitted Encumbrances.

**10.4 Other Liabilities.** Borrower will not incur, create, assume, or permit to exist, any Indebtedness or liability on account of either borrowed money or the deferred purchase price of property, except (i) Obligations to Lender, (ii) debt expressly subordinated to Borrower's Obligations to Lender pursuant to a subordination agreement in form and substance satisfactory to Lender or (iii) Permitted Indebtedness set forth on Section 10.4 of the Borrower's Disclosure Schedule.

**10.5 [RESERVED]**

**10.6 Loans.** Borrower will not make any loans to any Person, other than advances to employees of Borrower in the ordinary course of business, with outstanding advances to any employee not to exceed \$1,000 at any time.

**10.7 Guaranties.** Borrower will not assume, guaranty, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any Person, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

**10.8 Transfers of Notes or Accounts.** Borrower will not sell, assign, transfer, discount or otherwise dispose of any Accounts or any promissory note payable to Borrower, with or without recourse.

**10.9 Dividends.** Borrower will not declare or pay any cash dividend, make any distribution on, redeem, retire or otherwise acquire directly or indirectly, any of its Equity Interests without the prior written consent of Lender except for dividends declared by SUSA and SGS and payable only and directly to SG. For the avoidance of doubt, SG will not declare or pay any cash dividend without the prior written consent of Lender.

**10.10 Payments to Affiliates.** Except as set forth in Section 10.10 of the Borrower's Disclosure Schedule, or as otherwise approved by Lender in writing in advance, Borrower shall not make any payments of cash or other property to any Affiliate.

**10.11 Modification of Documents.** Borrower will not change, alter or modify, or permit any change, alteration or modification of its Organizational Documents in any manner that might adversely affect Lender's rights hereunder as a secured lender or its Collateral without Lender's prior written consent.

**10.12 Change Business or Name.** Borrower will not engage in any business other than the Business, or change its names as it appears in the official filings of its state of organization.

**10.13 Settlements.** Other than in the ordinary course of its Business, Borrower will not compromise, settle or adjust any claims in any amount relating to any of the Collateral, without the prior written consent of Lender.

## SECTION 11. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default (hereinafter referred to as an "**Event of Default**"):

**11.1 Failure to Pay.** The failure by Borrower to pay, (a) when due, any payment of principal, (b) within two (2) Business Days of the date when due, interest, fees or other charges due and owing to Lender pursuant to any obligations of Borrower to Lender including, without limitation, those Obligations arising pursuant to this Agreement or any Loan Document, or under any other agreement for the payment of monies then due and payable to Lender, or (c) any Taxes due to any Governmental Authority.

**11.2 Failure of Insurance.** Failure of one or more of the insurance policies required hereunder to remain in full force and effect; failure on the part of Borrower to pay or cause to be paid all premiums when due on the insurance policies pursuant to this Agreement; failure on the part of Borrower to take such other action as may be requested by Lender in order to keep said policies of insurance in full force and effect until all Obligations have been indefeasibly paid in full; and failure on the part of Borrower to execute any and all documentation required by the insurance companies issuing said policies to effectuate said assignments.

**11.3 Failure to Perform.** Borrower's failure to perform or observe any covenant, term or condition of this Agreement or in any other Loan Document.

**11.4 Cross Default.** Borrower's breach of or default under any agreement or contract with (i) Hillair Capital, or (ii) Avnet, Inc., or (iii) any other third party which default with respect to any other third party would result in a liability to Borrower in excess of \$20,000.

**11.5 False Representation or Warranty.** Borrower shall have made any statement, representation or warranty in this Agreement or in any other Loan Document to which Borrower is a party or in a certificate executed by Borrower incident to this Agreement, which is at any time found to have been false in any material respect at the time such representation or warranty was made.

**11.6 Liquidation, Voluntary Bankruptcy, Dissolution, Assignment to Creditors.** Any resolution shall be passed or any action (including a meeting of creditors) shall be taken by Borrower for the termination, winding up, liquidation or dissolution of Borrower, or Borrower shall make an assignment for the benefit of creditors, or Borrower shall file a petition in voluntary liquidation or bankruptcy, or Borrower shall file a petition or answer or consent seeking, or consenting to, the reorganization of Borrower or the readjustment of any of the Indebtedness of Borrower under any applicable insolvency or bankruptcy laws now or hereafter existing (including the Bankruptcy Code), or Borrower shall consent to the appointment of any receiver, administrator, liquidator, custodian or trustee of all or any part of the property or assets of Borrower or any corporate or company action shall be taken by Borrower for the purposes of effecting any of the foregoing.

**11.7 Involuntary Petition Against Borrower.** Any petition or application for any relief is filed against Borrower under applicable insolvency or bankruptcy laws now or hereafter existing (including the Bankruptcy Code) or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity), and is not dismissed or stayed within thirty (30) days of the filing thereof.

**11.8 Judgments; Levies.** Judgments or attachments aggregating in excess of \$20,000 at any given time are obtained against Borrower which remain unstayed for a period of ten (10) days or are enforced.

**11.9 [Reserved]**

**11.10 Environmental Claims.** Lender determines that any Environmental Liabilities and Costs or Environmental Lien with respect to Borrower will have a potentially Material Adverse Effect.

**11.11 Failure to Notify.** If at any time Borrower fails to provide Lender immediately with notice or copies, if written, of all complaints, orders, citations or notices with respect to environmental, health or safety complaints within five (5) Business Days of Borrower's receipt of such complaints, orders, citations, or notices or Borrower's becoming aware of such.

**11.12 Failure to Deliver Documentation.** Borrower shall fail to obtain and deliver to Lender any other documentation required to be signed or obtained as part of this Agreement, or shall have failed to take any reasonable action requested by Lender to perfect, protect, preserve and maintain the security interests and Lien on the Collateral provided for herein.

**11.13 Material Adverse Effect.** A Material Adverse Effect shall have occurred.

**11.14 Dissolution; Maintenance of Existence.** Borrower is dissolved, or Borrower fails to maintain its corporate existence in good standing, or the usual business of Borrower ceases or is suspended in any respect.

**11.15 Indictment.** The indictment of Borrower or any director or Responsible Officer of Borrower under any criminal statute, or commencement of criminal or civil proceedings against Borrower, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of any portion of the property of Borrower.

**11.16 Tax Liens.** The filing of a Lien for any unpaid Taxes filed by any Governmental Authority against Borrower or any of its assets.

**11.17 Challenge to Validity of Loan Documents.** Borrower attempts to terminate or challenge the validity of, or its liability under, this Agreement or any other Loan Document, or any proceeding shall be brought to challenge the validity, binding effect of any Loan Document, or any Loan Document ceases to be a valid, binding and enforceable obligation of Borrower.

**11.18 Claims Against Lender.** Any claim asserted by Borrower seeking to challenge the Loan Documents, Lender's Liens in the Collateral or otherwise commencing any cause of action against the Lender.

**11.19 Other Events of Default.** Any events and/or occurrences set forth on Section 9 of the Loan Agreement Schedule.



## SECTION 12. REMEDIES

### 12.1 Acceleration; Other Remedies. Upon the occurrence and during the continuation of an Event of Default:

(a) Lender shall have all rights and remedies provided in this Agreement, any of the other Loan Documents, the UCC or other applicable law, all of which rights and remedies may be exercised without notice to Borrower, all such notices being hereby waived, except such notice as is expressly provided for hereunder or is not waivable under applicable law. All rights and remedies of Lender are cumulative and not exclusive and are enforceable, in Lender's discretion, alternatively, successively, or concurrently on any one or more occasions and in any order Lender may determine. Without limiting the foregoing, Lender may (i) accelerate the payment of all Obligations and demand immediate payment thereof to Lender, (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (iii) require Borrower, at Borrower's expense, to assemble and make available to Lender any part or all of the Collateral at any place and time designated by Lender, (iv) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (v) notify Account Debtors or other obligors to make payment directly to Lender, or notify bailees as to the disposition of Collateral, (vi) extend the time of payment of, compromise or settle for cash, credit, return of merchandise, and upon any terms or conditions, any and all Accounts or other Collateral which includes a monetary obligation and discharge or release the Account Debtor or other obligor, without affecting any of the Obligations, and (vii) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including, without limitation, entering into contracts with respect thereto, by public or private sales at any exchange, broker's board, any office of Lender or elsewhere) at such prices or terms as Lender may deem reasonable, for cash, upon credit or for future delivery, with Lender having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Borrower, which right or equity of redemption is hereby expressly waived and released by Borrower. If any of the Collateral or other security for the Obligations is sold or leased by Lender upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Lender. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Lender to Borrower designating the time and place of any public sale, or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower waives any other notice. In the event Lender institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, Borrower waives the posting of any bond which might otherwise be required. In addition to the foregoing and without limitation to any other provision hereof, Borrower hereby grants Lender its assignee or any of its representatives and also grants to any purchasers of any Collateral at any public or private sale conducted by Lender, the right and license, for a period of up to one hundred twenty (120) days commencing on the date of the conclusion of such public or private sale conducted by Lender, to use all of the Borrower's names, trade names, business names and trademarks, to enter upon and use the premises where the Collateral is located and to do with the Collateral so purchased, any or all of the Permitted Actions at no cost to Lender and at no cost to any purchaser of any Collateral at a public or private sale conducted by Lender or by any purchaser of any Collateral. Borrower acknowledges and agrees that the foregoing rights of Lender and any purchasers of Collateral pursuant to a public or private sale conducted by Lender shall survive the Term.

(b) Lender may apply the Proceeds of Collateral actually received by Lender from any sale, lease, foreclosure or other disposition of the Collateral to payment of any of the Obligations, in whole or in part (including attorneys' fees and legal expenses incurred by Lender with respect thereto or otherwise chargeable to Borrower) and in such order as Lender may elect, whether or not then due. Borrower shall remain liable to Lender for the payment on demand of any deficiency together with interest at the Default Interest Rate and all costs and expenses of collection or enforcement, including reasonable attorneys' fees and legal expenses.

(c) Lender may, at its option, cure any default by Borrower under any agreement with a third party or pay or bond on appeal any judgment entered against Borrower, discharge Taxes and Liens at any time levied on or existing with respect to the Collateral, and pay any amount, incur any expense or perform any act which, in Lender's sole and absolute judgment, is necessary or appropriate to preserve, protect, insure, maintain, or realize upon the Collateral. Such amounts paid by Lender shall be repayable by Borrower on demand and added to the Obligations, with interest payable thereon at the Default Interest Rate. Lender shall be under no obligation to effect such cure, payment, bonding or discharge, and shall not, by doing so, be deemed to have assumed any obligation or liability of Borrower.

(d) Lender and Lender's agents shall have the right to utilize any of Borrower's customer lists, registered names, trade names or trademarks to publicly advertise, sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral and Borrower will be deemed to have waived and voided any confidentiality agreements by and between Borrower and Lender.

**12.2 Set-off.** Lender shall have the right, immediately and without notice of other action, to set-off against any of Borrower's liabilities to Lender any money or other liability owed by Lender or any Affiliate of Lender (and such Affiliate of Lender is hereby authorized to effect such set-off) in any capacity to Borrower, whether or not due, and Lender or such Affiliate shall be deemed to have exercised such right of set-off and to have made a charge against any such money or other liability immediately upon the occurrence of such Event of Default even though the actual book entries may be made at a time subsequent thereto. The right of set-off granted hereunder shall be effective irrespective of whether Lender shall have made demand under or in connection with the Loans. None of the rights of Lender described in this Section are intended to diminish or limit in anyway Lender's or Affiliates of Lender's common-law set-off rights.

**12.3 Costs and Expenses.** Borrower shall be liable for all costs, charges and expenses, including attorneys' fees and disbursements, incurred by Lender by reason of the occurrence of any Event of Default or the exercise of Lender's remedies with respect thereto, each of which shall be repayable by Borrower on demand with interest at the Default Interest Rate, and added to the Obligations.

**12.4 No Marshalling.** Lender shall be under no obligation whatsoever to proceed first against any of the Collateral or other property which is security for the Obligations before proceeding against any other of the Collateral. It is expressly understood and agreed that all of the Collateral or other property which is security for the Obligations stands as equal security for all Obligations, and that Lender shall have the right to proceed against any or all of the Collateral or other property which is security for the Obligations in any order, or simultaneously, as in its sole and absolute discretion it shall determine. It is further understood and agreed that Lender shall have the right to sell any or all of the Collateral or other property which is security for the Obligations in any order or simultaneously, as Lender shall determine in its sole and absolute discretion.

**12.5 No Implied Waivers; Rights Cumulative.** No delay on the part of Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document or provided by statute or at law or in equity or otherwise shall impair, prejudice or constitute a waiver of any such right, remedy, power or privilege or be construed as a waiver of any Event of Default or as an acquiescence therein. No right, remedy, power or privilege conferred on or reserved to Lender hereunder or under any other Loan Document or otherwise is intended to be exclusive of any other right, remedy, power or privilege. Each and every right, remedy, power or privilege conferred on or reserved to Lender under this Agreement or under any of the other Loan Documents or otherwise shall be cumulative and in addition to each and every other right, remedy, power or privilege so conferred on or reserved to Lender and may be exercised by Lender at such time or times and in such order and manner as Lender shall (in its sole and absolute discretion) deem expedient.

## SECTION 13. OTHER RIGHTS OF LENDER

**13.1 Collections.** Borrower hereby authorizes Lender to, and Lender shall make such arrangements as it shall deem necessary or appropriate to, collect the Accounts and any other monetary obligations included in, or Proceeds of, the Collateral at any time whether or not an Event of Default has occurred. Borrower shall, at Borrower's expense and in the manner requested by Lender from time to time, direct that remittances and all other Proceeds of accounts and other Collateral be (a) remitted in kind to Lender, (b) sent to a post office box designated by and/or in the name of Lender, or in the name of Borrower, but as to which access is limited to Lender and/or (c) deposited into a bank account maintained in the name of Lender and/or a blocked bank account under arrangements with the depository bank under which all funds deposited to such blocked bank account are required to be transferred solely to Lender. In connection therewith, Borrower shall execute such post office box and/or blocked bank account agreements as Lender shall specify.

**13.2 Repayment of Obligations; Application.** All Obligations shall be payable at Lender's office set forth in the Loan Agreement Schedule or at a bank or such other place as Lender may expressly designate from time to time for purposes of this Section. Lender shall apply all payments received from Borrower and all Proceeds of Collateral received by Lender and all other amounts received by Lender to the Loans whether or not then due or to any other Obligations then due, in whatever order or manner Lender shall determine.

### **13.3 Lender Appointed Attorney-in-Fact.**

(a) Borrower hereby irrevocably constitutes and appoints Lender, with full power of substitution, as its true and lawful attorney-in-fact, with full irrevocable power and authority in its place and stead and in its name or otherwise, from time to time in Lender's discretion, at Borrower's sole cost and expense, to take any and all appropriate action and to execute and deliver any and all documents and instruments which Lender may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limiting the generality of the foregoing: (i) at any time any of the Obligations are outstanding, (A) to transmit to Account Debtors, other obligors or any bailees notice of the interest of Lender in the Collateral or request from Account Debtors or such other obligors or bailees at any time, in the name of Borrower or Lender or any designee of Lender, information concerning the Collateral and any amounts owing with respect thereto, (B) to execute in the name of Borrower and file against Borrower in favor of Lender Financing Statements or amendments with respect to the Collateral, or record a copy or an excerpt hereof in the United States Copyright Office or the United States Patent and Trademark Office and to take all other steps as are necessary in the reasonable opinion of Lender under applicable law to perfect the security interests granted herein, and (C) to pay or discharge Taxes, Liens, security interests or other encumbrances levied or placed on or threatened against the Collateral; and (ii) after and during the continuation of an Event of Default, (A) to receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or Borrower, any and all cash, checks, commercial paper, drafts, remittances and other instruments and documents relating to the Collateral or the Proceeds thereof, (B) to notify Account Debtors or other obligors to make payment directly to Lender, or notify bailees as to the disposition of Collateral, (C) to change the address for delivery of mail to Borrower and to receive and open mail addressed to Borrower, (D) take or bring, in the name of Lender or Borrower, all steps, actions, suits or proceedings deemed by Lender necessary or desirable to effect collection of or other realization upon the Collateral, (E) to obtain and adjust insurance required pursuant to this Agreement and to pay all or any part of the premiums therefor and the costs thereof, (F) to assemble, market and/or sell any Inventory or other Collateral, (G) to take any and all action and to execute and deliver any and all documents and instruments which Lender may deem reasonably necessary or advisable to (a) accomplish the purposes of perfecting, continuing and preserving, a continuing first priority security interest in any of the Collateral in favor of Lender, and (b) effect a transfer of any of the Collateral to Lender or to Lender's designees, and (H) to extend the time of payment of, compromise or settle for cash, credit, return of merchandise, and upon any terms or conditions, any and all Accounts or other Collateral which includes a monetary obligation and discharge or release the Account Debtor or other obligor, without affecting any of the Obligations.

(b) Borrower hereby ratifies, to the extent permitted by law, all that Lender shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Agreement. The powers of attorney granted pursuant to this Agreement are each a power coupled with an interest and shall be irrevocable until the Obligations are paid indefeasibly in full.

**13.4 Release of Lender.** Borrower hereby releases and exculpates Lender, its officers, partners, members, directors, employees, agents, representatives and designees, from any liability arising from any acts or occurrence under this Agreement or in furtherance thereof, whether as attorney- in-fact or otherwise, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact, except for gross negligence or willful misconduct as determined by a final and non-appealable order from a court of competent jurisdiction. In no event will Lender have any liability to Borrower for lost profits or other special or consequential damages.

**13.5 Uniform Commercial Code.** At all times prior and subsequent to an Event of Default hereinafter, Lender shall be entitled to all the rights and remedies of a secured party under the UCC with respect to all Collateral.

**13.6 Preservation of Collateral.** At all times prior and subsequent to an Event of Default hereinafter, Lender may (but without any obligation to do so) take any and all action which in its sole and absolute discretion is necessary and proper to preserve its interest in the Collateral, including without limitation the payment of debts of Borrower which might, in Lender's sole and absolute discretion, impair the Collateral or Lender's security interest therein, and the sums so expended by Lender shall be secured by the Collateral, shall be added to the amount of the Obligations due Lender and shall be payable on demand with interest at the rate applicable to the Loans set forth in Section 3.1 hereof from the date expended by Lender until repaid by Borrower. After written notice by Lender to Borrower and automatically, without notice, after an Event of Default, Borrower shall not, without the prior written consent of Lender in each instance, (a) grant any extension of time of payment of any Accounts, (b) compromise or settle any Accounts for less than the full amount thereof, (c) release in whole or in part any Account Debtor or other person liable for the payment of any of the Accounts or any such other Collateral, or (d) grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of the Accounts.

**13.7 Lender's Right to Cure.** In the event Borrower shall fail to perform any of its Obligations hereunder or under any other Loan Document, then Lender, in addition to all of its rights and remedies hereunder, may perform the same, but shall not be obligated to do so, at the cost and expense of Borrower. Such costs and expenses shall be added to the amount of the Obligations due Lender, and Borrower shall promptly reimburse Lender for such amounts together with interest at the Default Interest Rate from the date such sums are expended until repaid by Borrower.

**13.8 Inspection of Collateral.** From time to time as requested by Lender, Lender or its designee shall have access, (a) prior to an Event of Default, at the sole expense of Borrower, subject to the Loan Agreement Schedule, during reasonable business hours to all of the premises where Collateral is located for the purpose of inspecting the Collateral and to all of Borrower's Collateral, and all books and records of Borrower, and Borrower shall permit Lender or Lender's designees to make copies of such books and records or extracts therefrom as Lender may request, and (b) on or after an Event of Default, at the sole expense of Borrower, at any time, to all of the premises where Collateral is located for the purposes of inspecting, disposing and realizing upon the Collateral, and all Borrower's books and records, and Borrower shall permit Lender or its designee to make such copies of such books and records or extracts therefrom as Lender may request. Without expense to Lender, Lender may use such of Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, supplies and premises for the realization on the Collateral as Lender, in its sole and absolute discretion, deems appropriate. Borrower hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender at Borrower's expense all financial information, books and records, work papers, management reports and other information in its possession regarding Borrower.

#### **SECTION 14. PROVISIONS OF GENERAL APPLICATION**

**14.1 Waivers.** Borrower waives demand, presentment, notice of dishonor or protest and notice of protest of any instrument of Borrower or others which may be included in the Collateral.

**14.2 Survival.** All covenants, agreements, representations and warranties made by Borrower herein or in any other Loan Document or in any certificate, report or instrument contemplated hereby shall survive any independent investigation made by Lender and the execution and delivery of this Agreement, and such certificates, reports or instruments and shall continue so long as any Obligations are outstanding and unsatisfied, applicable statutes of limitations to the contrary notwithstanding.

**14.3 Notices.** All notices, requests and demands to or upon the respective parties hereto shall be in writing and either (a) delivered by registered or certified mail, return receipt requested, (b) delivered by hand, or (c) delivered by national overnight courier service with next Business Day delivery, and shall be deemed to have been duly given or made (i) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (ii) one (1) Business Day after deposit with a national overnight courier with all charges prepaid, or (iii) when hand-delivered. All notices, requests and demands are to be given or made to the respective parties at the addresses set forth on Section 11 of the Loan Agreement Schedule (or to such other addresses as either party may designate by notice in accordance with the provisions of Section 11 of the Loan Agreement Schedule).

**14.4 Amendments; Waiver of Defaults.** The terms of this Agreement shall not be amended, waived, altered, modified, supplemented or terminated in any manner whatsoever except by a written instrument signed by Lender and Borrower. Any default or Event of Default by Borrower may only be waived by a written instrument specifically describing such default or Event of Default and signed by the Lender.

**14.5 Binding on Successors.**

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Borrower may not assign any of its rights or obligations under this Agreement or the other Loan Documents to any Person without the prior written consent of Lender.

(b) Lender may assign any or all of the Obligations together with any or all of the security therefor to any Person which is an "Eligible Assignee" (as defined below) and any such assignee shall succeed to all of Lender's rights with respect thereto. Lender shall notify Borrower of any such assignment. Upon such assignment, Lender shall have no further obligations under the Loan Documents. Lender may from time to time sell or otherwise grant participations in any of the Obligations and the holder of any such participation shall, subject to the terms of any agreement between Lender and such holder, be entitled to the same benefits as Lender with respect to any security for the Obligations in which such holder is a participant. As used herein the term "Eligible Assignee" means (i) if an Event of Default has not occurred and is no continuing or Lender has not exercised any of its remedies in Section 12.1, any Person with sufficient financial resources to be able to meet its commitments hereunder, provided that such Person is not a direct competitor of Borrower, and (ii) if an Event of Default has occurred and is continuing or if Lender has exercised any of its remedies in Section 12.1, then any Person with no limitations.

**14.6 Invalidity.** Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**14.7 Publicity.** Borrower hereby authorizes Lender to make appropriate announcements of the financial arrangement entered into by and between Borrower and Lender, including, without limitation, announcements which are commonly known as tombstones, in such publications and to such selected parties as Lender shall in its sole and absolute discretion deem appropriate, or as required by applicable law.

**14.8 Section or Paragraph Headings.** Section and paragraph headings are for convenience only and shall not be construed as part of this Agreement.

**14.9 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, THE LAWS OF WHICH THE BORROWER HEREBY EXPRESSLY ELECTS TO APPLY TO THIS AGREEMENT, WITHOUT GIVING EFFECT TO PROVISIONS FOR CHOICE OF LAW THEREUNDER. THE BORROWER AGREES THAT ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE OR ARISING OUT OF THIS AGREEMENT SHALL BE COMMENCED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.**

**14.10 WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN BORROWER AND LENDER OR THEIR SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDINGS BETWEEN BORROWER AND LENDER. BORROWER WAIVES ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, SETOFFS OR COUNTERCLAIMS OF ANY KIND, NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED BY LENDER WITH RESPECT TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, EXCEPT COMPULSORY COUNTERCLAIMS.

**14.11 CONSENT TO JURISDICTION.** BORROWER HEREBY (a) IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA, LOS ANGELES COUNTY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, AND (b) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT THERETO. IN ANY SUCH ACTION OR PROCEEDING, BORROWER WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS AND PAPERS THEREIN AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT ITS OFFICES SET FORTH HEREIN OR OTHER ADDRESS THEREOF OF WHICH LENDER HAS RECEIVED NOTICE AS PROVIDED IN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, BORROWER CONSENTS TO THE COMMENCEMENT BY LENDER OF ANY SUIT, ACTION OR PROCEEDING IN ANY OTHER JURISDICTION TO ENFORCE LENDER'S RIGHTS AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.

**14.12 Confidentiality.**

(a) Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over Lender (including any self-regulatory authority), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this Section, to any permitted participant in, or any prospective participant in, any of its rights and obligations under this Agreement or any Eligible Assignee or prospective Eligible Assignee pursuant to Section 14.5(b), and (vi) with the consent of Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Lender or any of its Affiliates on a nonconfidential basis from a source other than Borrower. For purposes of this Section, "Information" means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to Lender on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary, provided that, in the case of information received from Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Lender acknowledges that (i) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities laws.

(c) If an Event of Default occurs and is continuing or Lender exercise any of its remedies in Section 12.1, then Lender shall be relieved of the confidentiality provisions of this Section 14.12 for the exercise of such remedies.

**14.13 Entire Agreement.** This Agreement, the other Loan Documents, any supplements or amendments hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith contains the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

**14.14 Counterparts.** This Agreement may be executed in counterparts and by facsimile or other electronic signatures, each of which when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument.

**14.15 Joint and Several Obligations.** If more than one Person is a Borrower hereunder, the provisions of Section 12 of the Loan Agreement Schedule shall apply.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURES ON NEXT PAGE]**



IN WITNESS WHEREOF, this Loan and Security Agreement has been duly executed as of the day and year first above written.

**BORROWER:**

**SYSOREX GLOBAL**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX USA**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX GOVERNMENT SERVICES, INC.**

By: /s/ Wendy Loundermon

Name: Wendy Loundermon

Title: President

**LENDER:**

**GEMCAP LENDING I, LLC**

By: /s/ David Ellis

David Ellis, Co-President

[SIGNATURE PAGE - LOAN AND SECURITY AGREEMENT]

## LOAN AGREEMENT SCHEDULE

Capitalized terms used in this Loan Agreement Schedule and not defined herein shall have the meanings set forth in the Loan and Security Agreement dated as of November 14, 2016 (as the same may be amended, modified, supplemented, renewed, extended or replaced from time to time) (the “**Loan Agreement**”) between SYSOREX GLOBAL, SYSOREX USA, and SYSOREX GOVERNMENT SERVICES, INC., jointly and severally as Borrower, and GemCap Lending I, LLC, as Lender.

**1. LOAN DETAILS**

**(a) Borrower:** SYSOREX GLOBAL, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303, SYSOREX USA, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 and SYSOREX GOVERNMENT SERVICES, INC., a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303.

**(b) [Reserved]**

**(c) Revolving Loans.**

**(i) Revolving Loan Amount.** Lender may, subject to the terms and conditions contained in this Loan Agreement Schedule and the other Loan Documents, and the satisfaction of the closing and funding conditions set forth in this Loan Agreement Schedule and the other Loan Documents, make revolving loans to Borrower (“**Revolving Loans**”) no later than three (3) Business Days prior to the Maturity Date in amounts requested by Borrower from time to time, but not more than twelve times each month, provided that the requested Revolving Loan would not cause the outstanding Revolving Loans to exceed the Revolving Loan Commitment existing immediately prior to the making of the requested Revolving Loan. Subject to the terms and conditions hereof, Borrower may borrow, repay and reborrow Revolving Loans, as set forth in this Loan Agreement Schedule.

**(ii) Advances.** Revolving Loans may be drawn in tranches of not less than Five Thousand Dollars (\$5,000) (each drawing, an “**Advance**” and collectively, the “**Advances**”). The obligation of Borrower to repay the Revolving Loans shall be evidenced by the Revolving Loan Note.

**(iii) Repayment of Principal.** The principal amount of the Revolving Loans shall be payable on the Maturity Date.

**(iv) Overadvances.** Notwithstanding any provision herein to the contrary, Borrower shall repay the Revolving Loans immediately at any time and from time to time in an amount by which the outstanding balance of the Revolving Loans exceeds the Revolving Loan Commitment, as determined by Lender (an “**Overadvance**”).

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**(v) Borrowing Procedures.** Whenever Borrower desires an Advance, Borrower will notify Lender by delivery of a borrowing certificate certified by a Responsible Officer ("**Borrowing Certificate**") no later than two (2) Business Days prior to the date of the proposed Advance, setting forth in reasonable detail, as of the date set forth on the Borrowing Certificate, (A) a schedule of all Accounts, (B) a schedule of Eligible Accounts setting forth the calculation of the Eligible Accounts on which such Advance is to be based and a calculation of the Advance requested in connection therewith, and (C) Borrower's use of the Advance, which Borrowing Certificate shall in all respects be subject to Lender's review and approval. In addition, Borrower shall furnish Lender with a Borrowing Certificate weekly on each Tuesday during the Term setting forth said information, irrespective of whether Borrower has then requested an Advance. Lender shall be entitled to rely on any facsimile or electronic transmission of a Borrowing Certificate given by a person who Lender reasonably believes to be a Responsible Officer, and Borrower shall indemnify and hold Lender harmless for any damages or loss suffered by Lender as a result of such reliance. The funding of each Advance shall be made in accordance with the applicable Borrowing Certificate as approved by Lender.

**(vi) Remittances from Account Debtors.** Remittances from Account Debtors and all other proceeds of Accounts and other Collateral shall be directed to Lender and deposited in an account at a financial institution selected by Lender (the "**Collection Account**"). Borrower shall cause all Collections with respect to all Accounts to be sent directly to Lender's address set forth in this Loan Agreement Schedule or in accordance with wire instructions as provided by Lender pursuant to a written instruction approved by Lender and delivered to all Account Debtors, which instruction may not be modified or terminated without Lender's prior written consent in each case. Once instituted, such payment system shall remain in effect unless Lender directs otherwise. Borrower shall bear all risk of loss of any funds deposited into such account except to the extent such loss is caused by the gross negligence or the willful misconduct of Lender. In connection therewith, Borrower shall execute such lockbox and/or bank account agreements as Lender shall specify from time to time. Any collections or other Collateral proceeds received by Borrower from any source whatsoever shall be held in trust for the benefit of Lender and immediately remitted to Lender in kind.

**(vii) Collections.** In the event that Borrower receives any Collections that should have been sent to the Collection Account, Borrower shall, promptly upon receipt and in any event within one Business Day of receipt, forward such Collections directly to Lender, in the form received, and promptly notify Lender of such event. Until so forwarded, such Collections shall be held in trust for the benefit of Lender.

**(viii) Application of Collections.** All amounts deposited into the Collection Account will, for the purposes of calculating the Borrowing Base and interest, be credited to the aggregate outstanding amount of the Revolving Loans on the date of deposit in the Collection Account. No checks, drafts or other instruments received by Lender shall constitute final payment to Lender unless and until such instruments have actually been collected.

**(ix) Revolving Loan Fees and Expenses.** All payments of interest, fees, costs, expenses and other charges provided for in this Loan Agreement Schedule or any other Loan Document that have not been paid to Lender on the due dates thereof, and any chargeback on an Eligible Account against which an Advance was made, shall be added to the principal amount of the Revolving Loans, and shall bear interest at the Default Interest Rate.

**(x) Application of Collections, Payments and Proceeds of Collateral:**

**A.** So long as no Event of Default shall have occurred, Lender agrees to apply all Collections and payments received as follows: first, to Overadvances; second, to all fees, costs and expenses; third, to accrued and unpaid interest; fourth, to matured and unpaid Obligations; and fifth, the principal amount of the Revolving Loans.

**B.** If an Event of Default shall have occurred, Lender may apply Collections, any other proceeds of Collateral and all other payments received by Lender to the payment of the Obligations in such manner and in such order as Lender may elect in its sole discretion.

**C.** In addition to the foregoing application of Collections, in order to satisfy Borrower's payment of amounts due under the Revolving Loans and all fees, expenses and charges with respect thereto that are due and payable under this Loan Agreement Schedule or any other Loan Document, Borrower hereby irrevocably authorizes the Lender to initiate manual and automatic electronic (debit and credit) entries through ACH to all deposit accounts maintained by Borrower, wherever located, in accordance with Section 2.5 of the Loan Agreement.

**(xi) Reserves.** Without limiting any other rights and remedies of Lender hereunder or under the other Loan Documents, the Revolving Loan Commitment shall be subject to Lender's continuing right, in its sole discretion, from time to time, to withhold a Reserve from the Revolving Loan Commitment to reflect, among other things, conditions, contingencies or risks that may affect the Collateral or the financial condition of the Borrower.

**(d) Use of Proceeds:** (i) payment in full to Western Alliance Bank in order for Western Alliance Bank to release its lien on the Collateral, (ii) purchase of accounts receivable and other assets from Integrio Technologies, LLC and Emtec Federal, LLC; (iii) payment of a commission fee to Joseph Gunnar & Co., LLC in the amount of \$300,000; (iv) payment of Closing fees and costs, fees and expenses of Lender's counsel and any Reserves; and (v) the remainder for Borrower's working capital purposes.

**(e) Financial Institution(s):**

Bank Name: Bridge Bank NA  
Address: 55 Almaden Boulevard  
San Jose, CA 95113  
ABA#: 121143260  
Account #: 101587129  
Phone: (408) 556-8391  
Fax: (408) 283-0513  
Reference: Sysorex  
Contact Person: Susan Wadi

**2. [RESERVED]**

**3. INTEREST, FEES AND CHARGES**

**(a) Interest on Loans.**

(i) [Reserved]

(ii) Interest on the unpaid principal balance of Revolving Loans shall be computed on the basis of the actual number of days elapsed and a year of 360 days and shall accrue on the unpaid principal balance of Advances at an annual rate equal to the greater of (I) nine and one-half percent (9.5%), and (II) sum of (i) the "Prime Rate" as reported in the "Money Rates" column of The Wall Street Journal, adjusted as and when such Prime Rate changes, plus (ii) six percent (6%) (the "**Revolving Loan Interest Rate**"). All accrued interest on the Revolving Loans shall be due and payable in accordance with the Revolving Loan Note.

**(b) Default Interest.** Following and during the continuation of an Event of Default, interest on the unpaid principal balance of the Revolving Loans shall accrue at an annual rate equal to the Revolving Loan Interest Rate plus four percent (4%) (the "**Default Interest Rate**").

**(c) Fees and Expenses.** Borrower shall pay to Lender the following fees:

**Closing Fee:**

A closing fee of \$100,000, representing one percent (1%) of the principal amount of the full amount of the Maximum Credit, due and payable on the Closing Date.

**Annual Line Fee:**

A fee equal to \$100,000, representing one percent (1%) of the maximum amount of Availability (i.e. \$10,000,000), due and payable on each of the Closing Date and the first anniversary thereof.

**Unused Line Fee:**

A fee equal to one half of one percent (0.5%) of the daily average unused portion of the maximum amount of Availability (i.e. \$10,000,000), calculated on an annualized basis, due and payable monthly, in arrears.

**Loan Administration Fee and Monitoring Fee:**

A fee equal to one half of one percent (0.5%) of the daily average used portion of Availability calculated on a monthly basis, due and payable monthly, in arrears.

**Audit Fees:**

Up to \$950 per person, per day, plus out-of-pocket expenses, for not more than two

(2) audits during each 12-month period of the Term; provided, that no such limitation shall apply following the occurrence of an Event of Default.

**Wire Fees:**

Up to \$15 per wire

**4. PREPAYMENT TERMS**

**(a) [Reserved]**

**(b) Revolving Loan Prepayment.** Borrower may voluntarily prepay the entire unpaid principal amount of the Revolving Loans without premium or penalty, provided, however, that, (i) such prepayment is no less than the amount of the then-outstanding aggregate principal sum of all Revolving Loans and all accrued and unpaid interest thereon, (ii) as part of such prepayment, Borrower shall pay Lender all other amounts due to Lender pursuant to the Revolving Loan Note, this Loan Agreement Schedule and the other Loan Documents, and (iii) in the event Borrower makes such prepayment on or before November 13, 2017, then Borrower shall pay to Lender an amount equal to the sum of (I) (1) the product of (A) the average daily principal balance of all Revolving Loans from the Closing Date through the date of prepayment, multiplied by (B) the daily Revolving Loan Interest Rate multiplied by (C) three hundred sixty five (365) days, minus (2) the amount of interest indefeasibly received by Lender on account of all Revolving Loans through the date of prepayment, and (II) twelve (12) months of the Loan Administration and Monitoring Fee set forth in Section 3(c) above (the “**Revolving Loan Prepayment Fee**”). The Revolving Loan Prepayment Fee is intended to compensate Lender for committing and deploying funds for Borrower’s Loans pursuant to the Loan Agreement and for Lender’s loss of investment of such funds in connection with such early termination, and is not intended as a penalty.

**(c) [Reserved]**

**(d) Prepayment Fees and Acceleration.** The Revolving Loan Prepayment Fee also shall be due and payable by Borrower to Lender if Lender accelerates the payment of the Obligations on or before November 13, 2017 due to the occurrence of an Event of Default.

**5. ADDITIONAL TERMS CONCERNING COLLATERAL: REPRESENTATION**

**(a) [Reserved]**

**(b) Intellectual Property**

In addition to the grants by Borrower and the rights of Lender in the Loan Agreement, Borrower hereby (i) grants to Lender an irrevocable, exclusive, worldwide license without payment of royalty or other compensation to Borrower to license, sublicense, use or otherwise exploit any of the Intellectual Property owned or licensed by Borrower and wherever the same may be located in any manner as Lender may determine in its sole and absolute discretion, upon the occurrence and during the continuance of an Event of Default, (i) authorizes Lender to sell any of the Intellectual Property in accordance with the Loan Agreement and the other Loan Documents, upon the occurrence and during the continuance of an Event of Default. In addition, Lender shall have full access to all media in which any of such Intellectual Property may be recorded or stored and to all software and hardware used for the compilation or printout thereof.

**(c) [Reserved]**

**6. ADDITIONAL CLOSING CONDITIONS**

**(a) Payoff Letters:** Borrower shall have delivered to Lender a payoff letter executed by Western Alliance Bank.

**7. ADDITIONAL AFFIRMATIVE COVENANTS**

**(a) Notify Lender.** In addition to the events and occurrences set forth in Section 9.1 of the Loan Agreement, Borrower shall inform Lender within two (2) Business Days of any event or circumstance that, to its knowledge, would cause Lender to consider any then existing Eligible Accounts as no longer constituting Eligible Accounts.

**(b) Financial Reports and Other Information.**

**(i) Annual Financial Statements.** Annual financial statements of Borrower, certified by the Chief Financial Officer and audited by an outside accounting firm acceptable to Lender, as soon as available, but in any event within ninety (90) days after the end of Borrower's Fiscal Year during the Term. Such financial statements shall (A) fairly present the financial position of Borrower as of the dates thereof and the results of its operations, cash flows and stockholders' equity for each of the periods then ended in all material aspects; and (B) be prepared in accordance with GAAP.

(ii) Monthly Financial Statements. Not later than twenty (20) days after the end of each calendar month, the unaudited balance sheets and the related statements of income of Borrower, certified by the Chief Financial Officer, subject to year-end audit adjustments, with an aging schedule for all accounts receivable and accounts payable, together with such other information with respect to the business of Borrower as Lender may request.

(iii) Quarterly Financial Statements. Quarterly financial statements of the Borrower, as soon as available but in any event no later than forty-five (45) days after the close of each calendar quarter, consisting of the unaudited balance sheet and the related statement of income of the Borrower, prepared in accordance with GAAP, subject to year-end audit adjustments, together with such other information with respect to the business of Borrower as Lender may request.

(iv) [Reserved]

(v) Borrowing Certificates. Weekly, and more frequently if so requested by Lender, a Borrowing Certificate in accordance with Section 1(c)(v) of this Loan Agreement Schedule.

(vi) Other Weekly Reports. Weekly aging schedule for all Accounts, accounts payable, and Inventory schedules, and such other reports as requested by Lender, in such form as Lender may request.

(vii) Items Upon Demand. Upon demand, assignments, in form acceptable to Lender, of all Accounts, and of the monies due or to become due on specific contracts relating to the same.

(c) **United States Contracts**. If any of the Accounts arise out of contracts with the United States or any of its departments, agencies or instrumentalities, Borrower will notify Lender and, if requested by Lender, execute any necessary instruments in order that all monies due or to become due under such contract shall be assigned to Lender and proper notice of the assignment given under the Federal Assignment of Claims Act.

## 8. [RESERVED]

## 9. ADDITIONAL EVENTS OF DEFAULT

The occurrence of any of the following shall also constitute an “**Event of Default**”:

(a) **Reduction in Equity Ownership Interests**. SG ceases to own of record and beneficially not less than one hundred percent (100%) of the issued and outstanding voting equity interests of SUSA and SUSA fails to own of record and beneficially not less than one hundred percent (100%) of the issued and outstanding voting equity interests of SGS.

## 10. [RESERVED]



## **11. NOTICES**

Notices, requests and demands under the Loan Agreement shall be given to each party at the following addresses in accordance with Section 14.3 thereof:

If to Borrower:

c/o Sysorex Global  
2479 East Bayshore Road - Suite 195  
Palo Alto, CA 94303  
Attn: Nadir Ali, Chief Executive Officer

With a copy to:

Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
Attn: Anthony A. Adler, Esq.

If to Lender:

GemCap Lending I, LLC  
24955 Pacific Coast Highway - Suite A202  
Malibu, CA 90265  
Attn: David Ellis, Co-President

With a copy to:

Cohen Tauber Spievack & Wagner P.C.  
420 Lexington Avenue - Suite 2400  
New York, NY 10170  
Attention: Robert A. Boghosian, Esq.

Notwithstanding the foregoing, that parties expressly acknowledge and agree that foregoing provisions of notice by Lender to Borrower's counsel is an accommodation only, and that Lender shall have fulfilled its notice obligation hereunder if notice shall have been received by Borrower at the address set forth above, irrespective of whether such notice is received by Borrower's counsel.

## **12. JOINT AND SEVERAL OBLIGATIONS**

If more than one Person is a Borrower hereunder, the following shall apply:

(a) All Obligations, covenants and liabilities of Borrower under the Loan Documents shall be the joint and several Obligations, covenants and liabilities of each Person who is a Borrower. All representations and warranties of Borrower hereunder shall be deemed made by each Person who is a Borrower. The Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of the Borrower shall in no way be affected by the failure of Lender to pursue or preserve its rights against any Person who is a Borrower or the release by Lender of any Collateral now or thereafter acquired from any Person who is a Borrower.

(b) Each Person who is a Borrower expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution or any other claim which such Borrower may now or hereafter have against any other Person who is a Borrower or other Person directly or contingently liable for the Obligations until all Obligations have been indefeasibly paid in full as determined by Lender.

(c) Each Person who is a Borrower represents and warrants to Lender that (i) the Borrower has one or more common or affiliated shareholders, directors and officers, (ii) the businesses and corporate activities of each Person who is a Borrower are closely related to, and substantially benefit, the business and corporate activities of the other, and (iii) each Person who is a Borrower will receive a substantial economic benefit from entering into the transactions evidenced by the Loan Documents and will receive a substantial economic benefit from the Loans, whether or not such amount is used directly by a Person who is Borrower, and (iv) the Loans made pursuant to the Loan Documents are for the exclusive and indivisible benefit of the Borrower.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, this Loan Agreement Schedule has been duly executed and delivered as of November 14, 2016.

**BORROWER:**

**SYSOREX GLOBAL**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX USA**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX GOVERNMENT SERVICES, INC.**

By: /s/ Wendy Loundermon

Name: Wendy Loundermon

Title: President

[SIGNATURE PAGE - LOAN AGREEMENT SCHEDULE]

## SECURED PROMISSORY NOTE (REVOLVING LOANS)

Up to \$10,000,000

November 14, 2016

FOR VALUE RECEIVED, the undersigned, **YSOREX GLOBAL**, a Nevada corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SG**”), **YSOREX USA**, a California corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SUSA**”) and **YSOREX GOVERNMENT SERVICES, INC.**, a Virginia corporation with offices at 2479 East Bayshore Road, Suite 195, Palo Alto, CA 94303 (“**SGS**”) and together with SUSA and SG, jointly and severally the “**Borrower**”) hereby unconditionally promises to pay to the order of **GEMCAP LENDING I, LLC**, a Delaware limited liability company with offices at 24955 Pacific Coast Highway, Suite A202, Malibu, CA 90265 (together with its successors, transferees and assigns, “**Lender**”), on or before the Maturity Date, the principal sum of up to Ten Million Dollars (\$10,000,000) in accordance with the terms of this Secured Promissory Note (Revolving Loans) (this “**Note**”) and the Loan and Security Agreement, of even date herewith, entered into by and between Borrower and Lender (as amended from time to time, the “**Loan Agreement**”). Capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

**INTEREST; DUE DATE; PREPAYMENT:** Interest on the unpaid principal balance of Revolving Loans shall be computed on the basis of the actual number of days elapsed and a year of 360 days and shall accrue on the unpaid principal balance of Advances at an annual rate equal to the greater of (I) nine and one-half percent (9.5%), and (II) sum of (i) the “Prime Rate” as reported in the “Money Rates” column of The Wall Street Journal adjusted as and when such Prime Rate changes, plus (ii) six percent (6%) (the “**Interest Rate**”). Following and during the continuation of an Event of Default, interest on the unpaid principal balance shall accrue at an annual rate equal to the Interest Rate plus four percent (4%) (the “**Default Interest Rate**”).

All accrued interest on the unpaid principal balance of Revolving Loans hereunder, including interest charges for Collection Days, shall be payable by Borrower in arrears (x) prior to the Maturity Date, on the seventh (7th) day of each calendar month (if such date is not a Business Day, then on the first Business Day thereafter), commencing on December 7, 2016, (y) in full on the Maturity Date, and (z) on demand after the Maturity Date.

Subject to the prepayment provisions hereof, Borrower may borrow, repay and reborrow Revolving Loans, as set forth in the Loan Agreement.

The entire principal balance of this Note then outstanding, plus any accrued and unpaid interest thereon, plus unpaid fees, together with all penalties and late payment fees, if any, shall be due and payable on the Maturity Date pursuant to the terms of the Loan Agreement and the other Loan Documents.

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Prior to the Maturity Date, Borrower may voluntarily prepay the entire unpaid principal amount of the Revolving Loans without premium or penalty provided, however, that (i) such prepayment is no less than the amount of the then-outstanding aggregate principal sum of all Revolving Loans hereunder and all accrued and unpaid interest thereon, (ii) as part of such prepayment, Borrower shall pay Lender all other amounts due to Lender pursuant to this Note, the Loan Agreement and the other Loan Documents, and (iii) in the event Borrower makes such prepayment on or before November 13, 2017, then Borrower shall pay to Lender an amount equal to the Revolving Loan Prepayment Fee. The Revolving Loan Prepayment Fee is intended to compensate Lender for committing and deploying funds for Borrower's Revolving Loans pursuant to the Loan Agreement and for Lender's loss of investment of such funds in connection with such early termination, and is not intended as a penalty. The Revolving Loan Prepayment Fee also shall be due and payable by Borrower to Lender if Lender accelerates the payment of the Obligations on or before November 13, 2017, due to the occurrence of an Event of Default.

**PAYMENT AND COLLECTION:** In order to satisfy Borrower's payment of amounts due under the Loans and all fees, expenses and charges with respect thereto that are due and payable under this Note, the Loan Agreement and the other Loan Documents, Borrower hereby irrevocably authorizes Lender to initiate manual and automatic electronic (debit and credit) entries through the Automated Clearing House or other appropriate electronic payment system ("**ACH**") to all deposit accounts maintained by Borrower, wherever located. At the request of Lender, Borrower shall complete, execute and deliver to the institution set forth below (with a copy to the Lender) an ACH agreement, voided check, information and/or direction letter reasonably necessary to so instruct Borrower's depository institutions. Borrower (i) shall maintain in all respects this ACH arrangement; (ii) shall not change depository institutions without Lender's prior written consent, and if consent is received, shall immediately execute similar ACH instruction(s), and (iii) waives any and all claims for loss or damage arising out of debits or credits to/from the depository institution, whether made properly or in error. Borrower has communicated with and instructed the institution(s) set forth below:

Bank Name:	Bridge Bank NA
Address:	55 Almaden Boulevard, San Jose, CA 95113
ABA#:	121143260
Account #:	101587129
Phone:	(408) 556-8391
Fax:	(408) 283-0513
Reference:	Sysorex
Contact Person:	Susan Wadi

**MAXIMUM RATE OF INTEREST:** It is intended that the Interest Rate and the Default Interest Rate shall never exceed the maximum rate, if any, which may be legally charged in the State of California for commercial loans made to corporations (the "**Maximum Rate**"). If the provisions for interest contained in this Note would result in a rate higher than the Maximum Rate, interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of Lender, returned to Borrower.

**FEES AND COSTS:** All fees, costs and expenses set forth in this Note, the Loan Agreement and other Loan Documents shall be paid by Borrower in accordance with the terms hereof and thereof. All fees, costs and expenses as provided in this Note, the Loan Agreement and other Loan Documents not paid when due shall be added to principal and shall thereafter bear interest at the Default Interest Rate.

**PLACE OF PAYMENT; NOTICES:** All payments hereon shall be made, and all notices to the Lender required or authorized hereby shall be given, at the office of Lender at the address designated in the Loan Agreement, or to such other place as Lender may from time to time direct by written notice to Borrower.

**APPLICATION OF PAYMENTS:** All payments made hereunder shall be made without defense or set-off for any debt or other claim which Borrower may assert against Lender. All payments received hereunder shall be applied in accordance with the provisions of the Loan Agreement.

**AMOUNTS DUE:** All amounts payable hereunder are payable by check, ACH payment or wire transfer in immediately available funds to the account number specified by Lender, in lawful money of the United States. At Lender's option, Lender may charge the Borrower's accounts for the interest accrued hereunder. Borrower agrees to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing the indebtedness evidenced hereby.

**SECURITY:** This Note is secured by a pledge of the Collateral as described in the Loan Documents. Borrower hereby acknowledges, admits and agrees that Borrower's obligations under this Note, the Loan Agreement and the other Loan Documents are full recourse obligations of Borrower to which Borrower pledges its full faith and credit.

**DEFAULTS; REMEDIES:** If either any amount under this Note is not paid in full when due or upon the occurrence of an Event of Default, the Lender may declare the unpaid principal sum, accrued and unpaid interest and all other amounts under this Note immediately due and payable and all amounts due under the Loan Agreement and the other Loan Documents immediately due and payable. In such event, the Lender shall have all of the rights and remedies set forth in the Loan Agreement and the other Loan Documents. The failure to exercise any of the rights and remedies set forth in the Loan Agreement or the other Loan Documents shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by Lender of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies.

**WAIVERS:** The Borrower waives demand for payment, presentment for payment, protest, notice of nonpayment or dishonor and any and all other notices and demands whatsoever.

**TERMINOLOGY:** Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note.

**LOAN AGREEMENT:** Reference is made to the Loan Agreement for provisions as to the Loan Documents, Loans, Collateral, fees, charges, remedies and other matters. If there is any conflict between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

HEADINGS: The headings in this Note are for convenience of reference only and shall not affect the meaning or interpretation of this Note or any provision hereof.

ATTORNEYS' FEES AND COSTS: If the Lender incurs any loss, costs or expenses in enforcing or collecting this Note, in whole or in part, or enforcing any of the terms of any of the other Loan Documents, the Borrower agrees to pay all losses, costs and expenses so paid or incurred by Lender including, without limitation, attorneys' fees and costs.

NON-PAYMENT OF FEES AND COSTS: All fees, costs and expenses as provided in this Note, the Loan Agreement and other Loan Documents not paid when due shall be added to principal and shall thereafter bear interest at the Default Interest Rate.

**APPLICABLE LAW**. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, THE LAWS OF WHICH THE BORROWER HEREBY EXPRESSLY ELECTS TO APPLY TO THIS NOTE, WITHOUT GIVING EFFECT TO PROVISIONS FOR CHOICE OF LAW THEREUNDER. THE BORROWER AGREES THAT ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE OR ARISING OUT OF THIS NOTE SHALL BE COMMENCED IN ACCORDANCE WITH THE PROVISIONS OF THIS NOTE.

**WAIVER OF JURY TRIAL**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN BORROWER, LENDER OR ITS SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THIS NOTE, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDINGS BETWEEN BORROWER AND LENDER. BORROWER WAIVES ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, SETOFFS OR COUNTERCLAIMS OF ANY KIND, NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED BY LENDER WITH RESPECT TO THIS NOTE, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, EXCEPT COMPULSORY COUNTERCLAIMS.

**CONSENT TO JURISDICTION. BORROWER HEREBY (a) IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA, LOS ANGELES COUNTY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS NOTE, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS AND/OR THE COLLATERAL OR ANY MATTER ARISING THEREFROM OR RELATING THERETO, AND (b) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT THERETO. IN ANY SUCH ACTION OR PROCEEDING, BORROWER WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS AND PAPERS THEREIN AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT ITS OFFICES SET FORTH HEREIN OR OTHER ADDRESS THEREOF OF WHICH LENDER HAS RECEIVED NOTICE AS PROVIDED IN THE LOAN AGREEMENT. NOTWITHSTANDING THE FOREGOING, BORROWER CONSENTS TO THE COMMENCEMENT BY LENDER OF ANY SUIT, ACTION OR PROCEEDING IN ANY OTHER JURISDICTION TO ENFORCE LENDER'S RIGHTS AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.**

**ASSIGNMENT:** Lender reserves the right to sell, assign, transfer, negotiate, or grant participation interests in all or any part of this Note, or any interest in Lender's rights and benefits hereunder.

**LOST NOTE:** In the event of the loss, theft, destruction or mutilation of this Note, upon request of Lender and submission of evidence reasonably satisfactory to the Borrower of such loss, theft, destruction or mutilation, and, in the case of any such loss, theft, or destruction, upon delivery of a bond or indemnity reasonably satisfactory to Borrower, or in the case of any such mutilation, upon surrender and cancellation of this Note, Borrower will issue a new Note of like tenor as the lost, stolen, destroyed or mutilated Note.

**JOINT AND SEVERAL OBLIGATIONS:** The obligations of SG, SUSA and SGS under this Note and all Obligations under the other Loan Documents are the joint are several obligations of SG, SUSA and SGS.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURES ON NEXT PAGE]**



IN WITNESS WHEREOF, this Secured Promissory Note (Revolving Loans) has been duly executed and delivered by Borrower as of the day and year first above written.

**BORROWER: SYSOREX GLOBAL**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX USA**

By: /s/ Nadir Ali

Name: Nadir Ali

Title: CEO

**SYSOREX GOVERNMENT SERVICES, INC.**

By: /s/ Wendy Loundermon

Name: Wendy Loundermon

Title: President

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[SIGNATURE PAGE – SECURED PROMISSORY NOTE (REVOLVING LOANS)]

## PRE-FUNDING AND POST-CLOSING AGREEMENT

**PRE-FUNDING AND POST-CLOSING AGREEMENT** (“**Agreement**”), dated as of November 14, 2016, with respect to the Loan and Security Agreement, of even date herewith (“**Loan Agreement**”) and the other documents and instruments relating thereto (collectively, the “**Loan Documents**”), between GEMCAP LENDING I, LLC, a Delaware limited liability company (together with its successors and assigns, “**Lender**”) and SYSOREX GLOBAL, a Nevada corporation (“**SG**”), SYSOREX USA, a California corporation (“**SUSA**”), and SYSOREX GOVERNMENT SERVICES, INC., a Virginia corporation (“**SGS**” and together with SUSA and SG, jointly and severally the “**Borrower**”). Capitalized terms used but not defined herein have the meanings given to them in the Loan Agreement.

## RECITALS

**WHEREAS**, the Borrower and Lender have executed and delivered the Loan Agreement and the Borrower has executed (or cause to be executed if Borrower is not an executing party) and delivered the Loan Agreement Schedule and the Note; and

**WHEREAS**, prior to the funding of the Loans in accordance with the Loan Agreement, Borrower must execute and deliver to Lender, the Pre-Funding Documents (defined herein); and

**WHEREAS**, to facilitate the closing of the transactions contemplated by the Loan Documents after the execution and delivery to Lender of the Pre-Funding Documents, Lender has entered into the Loan Documents in reliance on Borrower’s undertakings to satisfy the conditions set forth herein; and

**WHEREAS**, Borrower has agreed to satisfy the conditions set forth herein within the time periods set forth herein.

**NOW, THEREFORE**, the parties agree as follows:

1. **Pre-Funding Requirements**. In order for the Lender to fund the Loans in accordance with the Loan Agreement, Borrower must execute (or cause to be executed if Borrower is not an executing party) and deliver to Lender, all in form and substance acceptable to Lender, the following documents (collectively, the “**Pre-Funding Documents**”) with all such documents to be received by Lender on or before November 28, 2016 (the “**Pre-Funding Documents Delivery Date**”):

- a. Patent and Trademark Security Agreement;
  - b. Domain Name, URL and IP Address Assignment;
  - c. Borrower’s Disclosure Schedule;
  - d. Intercreditor Agreement;
  - e. Certificate of officer for each Borrower;
  - f. Opinion letter from counsel to Borrower (Mitchell Silberberg & Knupp LLP);
  - g. Payoff letter from Western Alliance Bank;
  - h. Payoff letters from secured creditors of Integrio Technologies, LLC and Emtec Federal, LLC (collectively, the “**Integrio Entities**”) with respect to the accounts receivable and other assets being purchased by Borrower (the “**Integrio Assets**”) from the Integrio Entities (the “**Integrio Asset Purchase**”);
  - i. Documents evidencing the purchase of the Integrio Assets by Borrower from the Integrio Entities;
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- j. Either a (i) full release and termination of all liens held by Synnex Corporation (“Synnex”) against the assets of Borrower with respect to the assets, or (b) subordination agreement executed by Synnex, Borrower and Lender;
- k. Insurance certificates and ACH agreements; and
- l. Loan disbursement letter.

Notwithstanding anything to the contrary contained in this Agreement, if the Pre-Funding Documents are not received by Lender prior to the expiration of the Pre-Funding Documents Delivery Date, the Loan Agreement and other Loan Documents shall automatically terminate, provided that Borrower shall be responsible to pay all of Lender’s out of pocket costs and expenses, including attorneys’ fees.

2. Post Funding Deliveries. On or before December 12, 2016, Borrower must execute (or cause to be executed if Borrower is not an executing party) and deliver to Lender, all in form and substance acceptable to Lender, the following documents (the “Post-Funding Documents”), with all such documents to be received by Lender on or before December 12, 2016 (the “Post Funding Documents Delivery Date”):

- a. Landlord Waiver and Access Agreements (with respect to the Borrower’s Premises); and
- b. Deposit account control agreement; and
- c. Such other documents as reasonably requested by Lender.

3. Event of Default; No Other Waiver; Counterparts. Borrower’s failure to timely deliver the Post- Funding Documents to Lender prior to the expiration of the Post-Funding Delivery Date shall constitute an Event of Default under the Loan Agreement. Except as expressly set forth herein, nothing contained herein shall act as a waiver or excuse of performance of any Obligations. This Agreement may be executed in counterparts, including facsimile or electronic signature, each of which when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Post-Closing Agreement has been duly executed as of the day and year first above written.

**BORROWER:**

**SYSOREX GLOBAL**

By: /s/ Nadir Ali  
Name: Nadir Ali  
Title: CEO

**SYSOREX USA**

By: /s/ Nadir Ali  
Name: Nadir Ali  
Title: CEO

**SYSOREX GOVERNMENT SERVICES, INC.**

By: /s/ Wendy Loundermon  
Name: Wendy Loundermon  
Title: President

**LENDER:**

**GEMCAP LENDING I, LLC**

By: /s/ David Ellis  
David Ellis, Co-President

[SIGNATURE PAGE –PRE-FUNDING AND POST-CLOSING AGREEMENT]