

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

Asset Purchase Agreement

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Teradyne, Inc.		12/31/2002	CORPORATION: MASSACHUSETTS
GenRad, Inc.		12/31/2002	CORPORATION: MASSACHUSETTS

RECEIVING PARTY DATA

Name:	NetVendor, Inc.
Street Address:	12725 MORRIS ROAD
Internal Address:	SUITE 300
City:	ALPHARETTA
State/Country:	GEORGIA
Postal Code:	30004
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 3

Property Type	Number	Word Mark
Registration Number:	2499452	SFDM
Registration Number:	2537078	SFLM
Registration Number:	2408094	ICC INDUSTRIAL COMPUTER CORPORATION

CORRESPONDENCE DATA

Fax Number: (404)365-9532

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 404-233-7000

Email: trademark@mmmlaw.com

Correspondent Name: Morris, Manning & Martin, LLP

Address Line 1: 3343 Peachtree Road, N.E.

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ATTORNEY DOCKET NUMBER:

9669-40479

TRADEMARK

900080671

REEL: 003571 FRAME: 0787

OP \$90.00 2499452

NAME OF SUBMITTER:	Heather Champion Brady
Signature:	/Heather Champion Brady/
Date:	06/29/2007
<p>Total Attachments: 12</p> <p>source=Asset Purchase Agreement#page1.tif</p> <p>source=Asset Purchase Agreement#page2.tif</p> <p>source=Asset Purchase Agreement#page3.tif</p> <p>source=Asset Purchase Agreement#page4.tif</p> <p>source=Asset Purchase Agreement#page5.tif</p> <p>source=Asset Purchase Agreement#page6.tif</p> <p>source=Asset Purchase Agreement#page7.tif</p> <p>source=Asset Purchase Agreement#page8.tif</p> <p>source=Asset Purchase Agreement#page9.tif</p> <p>source=Asset Purchase Agreement#page10.tif</p> <p>source=Asset Purchase Agreement#page11.tif</p> <p>source=Asset Purchase Agreement#page12.tif</p>	

ASSET PURCHASE AGREEMENT

dated as of

December 31, 2002

by and among

TERADYNE, INC.,

GENRAD, INC.

and

NETVENDOR INC.

TRADEMARK

REEL: 003571 FRAME: 0789

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of December 31, 2002, by and among Teradyne, Inc., a Massachusetts corporation ("Teradyne"), GenRad, Inc., a Massachusetts corporation ("GenRad") (Teradyne and GenRad being herein collectively referred to as "Seller"), and NetVendor Inc., a Delaware corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller conducts the MES Business (as defined below); and

WHEREAS, Buyer desires to purchase from Seller the assets of the MES Business identified herein, and Seller desires to sell to Buyer the assets of the MES Business identified herein to Buyer, upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual premises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.01. Definitions. (a) The following terms, as used herein, have the following meanings:

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such other Person.

"Ancillary Agreements" means, collectively, the Asia Support Services Agreement, the Assignment and Assumption Agreement, the D2B Software Products Reseller Agreement, the Registration Rights Agreement, the Teradyne SCE End-User Software License Agreement, and the Stockholders Agreement.

"Asia Support Services Agreement" means the agreement to be executed by Buyer and Seller, incorporating terms substantially equivalent to those set forth in Exhibit A, whereby Seller shall provide certain support services with respect to the MES Business operations in Asia.

"Assignment and Assumption Agreement" means the agreement to be executed by Buyer and Seller, in the form attached hereto as Exhibit B, with respect to the assignment by Seller of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities hereunder.

"Buyer Material Adverse Change" and "Buyer Material Adverse Effect" mean a material adverse change or effect, respectively, in the business, assets, condition (financial or otherwise), or results of operations or prospects of Buyer, taken as a whole.

"Closing Date" means the date of the Closing.

"D2B Software Products Reseller Agreement" means the agreement to be executed by Buyer and Seller, incorporating terms substantially equivalent to those set forth in Exhibit C, whereby Buyer shall have certain license and distribution rights with respect to Seller's D2B Editor and D2B Viewer software products.

"Group" means the Teradyne Manufacturing Execution Software group.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset.

"Material Adverse Change" and "Material Adverse Effect" mean a material adverse change or effect, respectively, in the business, assets, condition (financial or otherwise), or results of operations or prospects of the MES Business taken as a whole.

"MES Business" means Seller's business of designing, manufacturing and marketing, through the Group, manufacturing execution system software products for manufacturers in the electronics, aerospace, defense and automotive sectors.

"Person" means an individual, corporation, partnership, association, limited liability company, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Registration Rights Agreement" means that certain Fourth Amended and Restated Registration Rights Agreement to be executed by and between Buyer and Seller, in the form attached hereto as Exhibit D.

"Stockholders Agreement" means that certain Fifth Amended and Restated Stockholders Agreement to be executed by and between Buyer and Seller, in the form attached hereto as Exhibit E.

"Tax" means any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid-up capital, profits, greenmail, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any governmental authority (domestic or foreign) responsible for the imposition of any such tax.

"Tax Information" means any returns, declarations, reports, claims for refund, information statements, and all other documents relating to Taxes, including, without limitation, any schedule or attachment thereto and including any amendment thereof.

"Teradyne SCE End-User Software License Agreement" means the agreement to be executed by Buyer and Seller, incorporating terms substantially equivalent to those set forth in Exhibit F, whereby Seller shall have the right to license from Buyer the current version of the

SCE software product and Buyer shall agree to perform certain support and maintenance obligations with respect thereto.

"Teradyne Trademarks and Tradenames" means Seller's trademarks and tradenames not identified on Schedule 2.01(e).

"TRACS Reseller Agreement" means the agreement to be executed by Buyer and Seller, incorporating terms substantially equivalent to those set forth in Exhibit G, whereby Seller shall have the right to continue to distribute the TRACS software product and Buyer shall agree to perform certain support and maintenance obligations with respect thereto.

(b) The following terms are defined in the following Sections:

Term	Section
Agreement	Recital
Allocation Statement	2.07
Assumed Liabilities	2.03
Buyer	Recital
Buyer Balance Sheet	4.08
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Designated MES Employees	6.02
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Indemnifying Party	9.03
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Term	Section
Purchased Assets	2.01
Reserved Shares	4.11
Seller	Recital
Seller's MES Proprietary Rights	2.01
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2003 Projected Expense Level	2.06

ARTICLE II

PURCHASE AND SALE

2.01. Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell, transfer, assign and deliver, or cause to be sold, transferred, assigned and delivered, to Buyer at Closing, free and clear of all Liens other than Permitted Liens, the assets identified below in this Section 2.01 (the "Purchased Assets"):

(a) the personal property, inventories and equipment used in the MES Business identified on Schedule 2.01(a);

(b) subject to Section 2.05 below, all rights under the contracts, agreements, leases, licenses, commitments, sales and purchase orders and other instruments, supply agreements and customer agreements used in the MES Business identified on Schedule 2.01(b) (collectively, the "Contracts");

(c) all accounts receivable associated directly with the MES Business and arising from the licensing of software or from the delivery of goods or performance of services on or before December 31, 2002, pre-paid rent, and pre-paid license and support fees paid for third-party software which is sold by the MES Business, a listing of which as of a recent date is set forth on Schedule 2.01(c);

(d) all of Seller's rights, claims, deposits, refunds, setoffs, reimbursements, credits, causes of action or rights of set-off against third parties relating to the Purchased Assets, including, without limitation, unliquidated rights under manufacturers' and vendors' warranties;

(e) the following proprietary rights: (i) all computer software, data, and documentation identified on Schedule 2.01(e), (ii) all trademarks, service marks, trade dress, logos, tradenames, service names and corporate names, and registrations and applications for registration thereof, identified on Schedule 2.01(e), (iii) all copyrights and registrations and applications for registration thereof identified on Schedule 2.01(e), and (iv) all patents identified on Schedule 2.01(e) (collectively, "Seller's MES Proprietary Rights");

(f) all books, records, files and papers, whether in hard copy or computer format, including, without limitation, sales and purchase correspondence, lists of present and

former suppliers, lists of present and former customers, personnel and employment records relating directly to the MES Business, except for Seller's and Seller's Affiliates' Tax Information; and

(g) all goodwill associated with the MES Business or the Purchased Assets, together with the right to represent to third parties that Buyer is the successor to the MES Business (excluding, however, any goodwill associated with the Teradyne Trademarks and Tradenames).

2.02. Excluded Assets. Notwithstanding any provision in this Agreement to the contrary, Buyer expressly understands and agrees that all assets and properties of Seller, whether related to the MES Business or otherwise, which are not specifically identified as Purchased Assets herein (the "Excluded Assets") shall be excluded from the Purchased Assets.

2.03. Assumption of Liabilities. Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the time of Closing, to assume the following liabilities (the "Assumed Liabilities");

(a) all liabilities shown on the Net Asset List attached as Schedule 2.03(a);

(b) all liabilities and obligations of Seller arising under the Contracts (other than liabilities or obligations attributable to any failure by Seller to comply with the terms thereof) or in relation to any contractual liability to any customers of the MES Business; and

(c) all liabilities and obligations reflected on Schedule 2.03(c).

2.04. Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of Seller or any Affiliate of Seller of whatever nature, whether presently in existence or arising or asserted hereafter (all such liabilities and obligations not being assumed being herein referred to as the "Excluded Liabilities").

2.05. Assignment of Contracts and Rights. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without consent of a third party thereto, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Buyer or Seller thereunder. Seller and Buyer will each use commercially reasonable efforts (but without any payment of money by Seller other than its out-of-pocket legal expenses) to obtain the consent of the other party or parties to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may request. If such consent is not obtained, or if an attempted assignment of any such Purchased Asset, claim, right or benefit would be ineffective or would adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights, Seller and Buyer will cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including, without limitation, subcontracting, sublicensing,

or subleasing to Buyer, or under which Seller would enforce for the benefit of Buyer, with Buyer assuming Seller's obligations, any and all rights of Seller against a third party thereto. Seller will promptly pay to Buyer when received all monies received by Seller under any Purchased Asset or any claim or right or any benefit arising thereunder, except to the extent the same represents an Excluded Asset. Notwithstanding any provision herein to the contrary, any contract (other than contracts with customers or partners) which cannot be assigned by Seller and which would prohibit the transfer of any software and/or hardware to Buyer shall not be assigned and shall not be subject to the foregoing provisions of this Section.

2.06. Purchase Consideration. Subject to the terms and conditions of this Agreement, in consideration of the sale and assignment of the Purchased Assets by Seller to Buyer, Buyer agrees to the following (collectively, the "Purchase Consideration");

(a) At Closing, Buyer shall pay to Seller an amount equal to \$1,500,000 by certified or official bank check issued by a branch of a bank located within the United States, payable to the order of Seller, or by wire transfer to an account designated by Seller, subject to any adjustment required in accordance with the provisions of Section 2.08;

(b) At Closing, Buyer shall issue to Seller 7,566,131 shares of Buyer's Series D Preferred Stock, which shares are equal to 19.9% of the fully-diluted shares of capital stock of Buyer (including, without limitation, all outstanding stock, outstanding options and warrants and unissued options that are authorized pursuant to the terms of any stock option plan) as of the Closing Date and after application of Buyer's anti-dilution provisions which are triggered by the issuance to Seller of said Series D Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a liquidation preference senior to all other capital stock of Buyer and equal to \$3,200,000, plus all accrued and unpaid dividends, if any (the "Liquidation Preference"). Seller shall have the right, exercisable at any time after December 31, 2007, to require that Buyer repurchase for cash all or any portion of the Preferred Stock at its Liquidation Preference. In all other respects, the Preferred Stock shall have terms and conditions at least as favorable as those of any prior series of Buyer preferred stock. Notwithstanding any provision herein to the contrary, in the event that any of the foregoing provisions of this Section 2.06(b) is inconsistent with the provisions contained in the Charter or the Stockholders Agreement, the provisions contained in the Charter and the Stockholders Agreement shall be controlling.

(c) Without in any way limiting the obligations of Buyer under Section 6.02, Buyer shall pay to Seller at Closing, with respect to each MES Employee not being offered employment with Buyer and being terminated by Seller in connection with the sale of the MES Business to Buyer, an amount equal to the severance compensation for such employee as set forth on Schedule 2.06(c).

(d) In the event that the gross sales, maintenance and services revenues recognized by Buyer, determined in accordance with generally accepted accounting principles consistently applied, during calendar year 2003 (including deferred revenue shown on the Net Asset List) exceed the 2003 Projected Expense Level (as defined below), Buyer shall pay to Seller additional consideration equal to such excess, but in no event more than \$500,000 (the "Cash-Flow Earnout"). The "2003 Projected Expense Level" shall mean an amount equal to the

sum of (i) \$9,036,000 and (ii) the actual cost incurred in 2003 for additional employees and consultants who are primarily providing billable services (including without limitation initial hiring expenses, hardware purchase costs and travel expenses associated with such employees and consultants) in excess of the costs for all such employees and consultants as provided in Schedule 2.06(d); provided, however that any such hardware purchase costs and initial hiring expenses shall be amortized on a straight-line basis over a three-year period and only the portion thereof which is allocable to calendar year 2003 shall be included in the calculation of 2003 costs under clause (ii) of this sentence. The Cash-Flow Earnout shall be paid to Seller within 60 days following the end of calendar year 2003. Buyer agrees that it will not delay or postpone the booking of orders that would ordinarily be booked in 2003.

(e) In the event that the license revenues recognized by Buyer, determined in accordance with generally accepted accounting principles consistently applied, for calendar year 2004 or calendar year 2005 from software license agreements to customers ("License Revenues") exceed the Base Target applicable to such year, as indicated by the table below, Buyer shall pay to Seller additional consideration with respect to such year in an amount equal to the product of (i) the difference between the License Revenues so recognized during such year and the applicable Base Target and (ii) the applicable Earnout Percentage for such year. Notwithstanding any provision herein to the contrary, License Revenues from the resale of MetricStream products and those arising under software license agreements entered into by Buyer after the Closing Date, pursuant to which Buyer acts as a reseller or OEM of software products that Buyer does not currently resell or sell, will be calculated, for purposes of the immediately preceding sentence, net of any royalties paid by Buyer to third parties in connection therewith.

Calendar Year	Base Target	Earnout Percentage
2004	\$2,900,000	40%
2005	\$2,900,000	30%

Notwithstanding any provision herein to the contrary, in no event shall the total additional consideration payable to Seller with respect to calendar years 2004 and 2005 exceed, in the aggregate, an amount equal to \$4,000,000, excluding any amount payable as part of the Cash-Flow Earnout pursuant to Section 2.06(d). Any additional consideration payable under this Section 2.06(e) shall be paid by Buyer to Seller within 60 days following the end of the calendar year to which such consideration relates.

(f) For purposes of Sections 2.06(d) and (e), Buyer shall promptly issue invoices, to the extent the same are required for payment, to customers for all sales, maintenance, and services revenues properly billable in 2003, 2004 or 2005, with customary payment terms, and shall otherwise conduct its business in the ordinary course.

(g) Together with any payment of the Cash-Flow Earnout pursuant to Section 2.06(d) or additional consideration pursuant to Section 2.06(e), Buyer shall deliver to Seller detailed back-up documentation, in form and substance reasonably acceptable to Seller, supporting the calculation of such payment.

2.07. Allocation of Purchase Price. (a) Schedule 2.07 sets forth the agreed value of the Purchased Assets (the "Allocation Statement").

(b) Except as may be otherwise agreed to by the parties, Seller and Buyer agree to report an allocation of the Purchase Consideration among the Purchased Assets in a manner entirely consistent with the Allocation Statement and to act in accordance with the Allocation Statement in the preparation of financial statements and filing of all tax returns (including, without limitation, filing Form 8594 with its Federal income tax return for the taxable year that includes the date of the Closing) and in the course of any tax audit, tax review or tax litigation relating thereto.

(c) No later than 10 days prior to the filing of their respective Forms 8594 relating to this transaction, each party shall deliver to the other party a copy of its Form 8594.

2.08. Purchase Consideration Adjustments. (a) On or before the Closing Date, Seller shall deliver to Buyer a net asset list reflecting the actual value as of December 31, 2002 of the items listed on the form of net asset list shown on Schedule 2.03(a) (the "Net Asset List"). If total assets on the Net Asset List exceed the total liabilities, the cash portion of the Purchase Consideration shall be increased by an amount equal to such excess, and if the total liabilities exceed the total assets, the cash portion of the Purchase Consideration shall be decreased by the amount of such excess. On or before April 30, 2003, Buyer and Seller shall review the Net Asset List and correct any items listed thereon that are determined to be incorrect, and, in the event of any such correction, the Purchase Price shall be adjusted accordingly and Buyer or Seller, as the case may be, shall pay to the other party the amount of such adjustment on or before May 15, 2003.

(b) If Buyer is required, in connection with any account receivable listed on Schedule 2.01(c), to pay any VAT or sales tax for which Buyer is not entitled to reimbursement from either the customer to which such account receivable relates or the applicable taxing authority, Seller shall pay to Buyer the amount of such non-reimbursable tax within 30 days after receipt by Seller of Buyer's demand therefor, accompanied by back-up documentation reasonably acceptable to Seller.

(c) (i) Schedule 2.01(c) includes an account receivable with respect to Celestica for which an invoice was issued by Seller having a due date of August 2, 2002 (the "Celestica A/R Invoice"). The parties agree that any and all amounts collected by Buyer for the Celestica A/R Invoice shall be paid to Seller within 30 days after Buyer's receipt thereof.

(ii) Schedule 2.01(c) includes a list of accounts receivable, in addition to that pertaining to Celestica, for which Seller has issued invoices having due dates on or before October 31, 2002 (the "Pre-November A/R Invoices"). The parties agree that if collections for the Pre-November A/R Invoices exceed 80% of the aggregate gross amount of such Invoices, then, in such event, Buyer shall pay to Seller the amount by which such collections exceed 80% of such aggregate gross amount within 30 days after Buyer's receipt thereof.

(iii) The invoices issued by Seller with respect to all accounts receivable set forth on Schedule 2.01(c) other than those referenced in clauses (i) and (ii) above are herein referred to as the "New A/R Invoices." The parties agree that if collections for the New A/R Invoices exceed 97.1% of the aggregate gross amount of such Invoices, then, in such event, Buyer shall pay to Seller the amount by which such collections exceed 97.1% of such aggregate gross amount within 30 days after Buyer's receipt thereof.

2.09. Interim Adjustments. Net adjustments shall be made between Seller and Buyer within 30 days following the Closing as follows:

(i) Seller shall pay to Buyer any amounts received by Seller after December 31, 2002 and through the Closing Date from software licenses or goods and services provided to customers by the Group.

(ii) Buyer shall pay to Seller the amount equal to any expenses or costs incurred by the Group after December 31, 2002 and through the Closing Date; provided, however, that such expenses or costs will not include (1) costs or expenses that require the approval of Buyer pursuant to Section 5.01, unless such costs or expenses are so approved, and (2) Teradyne corporate allocations not reflected in the Financial Information.

2.10. Closing. (a) The closing (the "Closing") of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall take place at the offices of White & McNamara, P.C. in Wellesley, Massachusetts, on the earlier to occur of January 14, 2003 or the business day immediately succeeding the date upon which the condition set forth in Section 8.02(e) is satisfied, unless otherwise agreed in writing by the parties. At the Closing:

(b) Buyer shall deliver to Seller the cash portion of the Purchase Consideration set forth in Section 2.06, subject to any adjustment required in accordance with the provisions of Sections 2.08;


(c) Seller and Buyer shall enter into an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit B, and Seller shall deliver to Buyer such bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary or appropriate to vest in Buyer all right, title and interest in, to and under the Purchased Assets;

(d) Seller and Buyer shall enter into the Registration Rights Agreement and the Stockholders Agreement, in the forms attached hereto as Exhibit D and Exhibit E, respectively.


(e) Seller and Buyer shall also execute and deliver, or shall cause to be executed and delivered, all such instruments, documents and certificates as may be reasonably

IN WITNESS WHEREOF, the parties hereto here caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

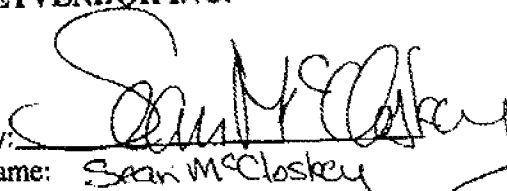
TERADYNE, INC.

By: 
Name: Stuart M. Osattin
Title: Vice President, Treasurer

GENRAD, INC.

By: 
Name: Stuart M. Osattin
Title: Vice President, Treasurer

NETVENDOR INC.

By: 
Name: Sean McCloskey
Title: President & CEO

Schedule 2.01(e)

Seller's MES Proprietary Rights

The following software products and source code, and all associated versions and variances:

- SCE
- SFDM
- SFLM
- TRACS
- PQM

Trademarks:

- GR Force/SCE™
- SFDM®
- SFLM®
- TRACS™
- ICC Industrial Computer Corporation®
- PQM™

Copyrights:

- None registered that are known

Patents:

- US 6,138,143
- US 6,393,458

Note: The SFDM, SFLM, and ICC Industrial Computer Corporation are all registered and still "live" (hence the ® notation). TRACS has since become "dead", and is now only a common-law trademark. GR Force/SCE and PQM were both never filed with the US Patent & Trademark Office, so they are also just common-law trademarks (hence the TM symbol).