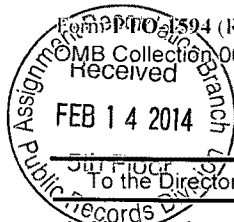


02/14/2014



U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office



REC

103666071

TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

02/14/14

1. Name of conveying party(ies):

Senergy Thermal LLC

- Individual(s)
- Partnership
- Corporation- State: _____
- Other limited liability company
- Association
- Limited Partnership

Citizenship (see guidelines) _____

Additional names of conveying parties attached? Yes No

3. Nature of conveyance/Execution Date(s) :

Execution Date(s) 5/10/2013

- Assignment
- Security Agreement
- Other Acquisition of assets
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: CES Group, LLC

Street Address: 13200 Pioneer Trail, Suite 150

City: Eden Prairie

State: MN

Country: USA Zip: 55347-4125

- Individual(s) Citizenship _____
- Association Citizenship _____
- Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship _____
- Other LLC Citizenship Delaware

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) _____ Text _____

B. Trademark Registration No.(s)

3,698,313

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Dawn Valois

Internal Address: c/o Nortek, Inc.

Street Address: 50 Kennedy Plaza

City: Providence

State: RI Zip: 02903

Phone Number: 401-751-1600

Docket Number: _____

Email Address: dawn.valois@nortekinc.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$40

- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

02/18/2014 KNGUYEN1 00000011 3698313

Deposit Account Number _____ 40.00 00

Authorized User Name _____

9. Signature:

Dawn Valois
Signature

2/10/14
Date

Dawn Valois

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

19

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK
REEL: 005220 FRAME: 0450

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made this 10th day of May 2013 (the "Effective Date") by and among Senergy Thermal LLC, a New Hampshire limited liability company ("Seller"), CES Group, LLC, a Delaware limited liability company ("Purchaser"); and, for purposes of Sections 5.4, 5.6 and Article VI of this Agreement only, Dr. Izundu Obinelo ("Sole Member"). Purchaser and Seller may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

A. Seller develops enterprise-level data center infrastructure management solutions (the "Business"), including software providing thermal monitoring and analysis (the "Software").

B. Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, the Software and certain of the assets related to the Software, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I
PURCHASE AND SALE OF ASSETS AND PURCHASE PRICE

1.1 **Purchase and Sale of Transferred Assets**. Subject to the terms and conditions of this Agreement, on the Effective Date, Seller shall sell, transfer, convey, assign and deliver ("Transfer") to the Purchaser, and the Purchaser shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to all of the assets, properties and business of Seller, whether tangible or intangible, whether accrued, contingent or otherwise, and relating to the Business and the Software as of the Effective Date, all of which shall be delivered by Seller and accepted by Purchaser except the Excluded Assets (as defined in Section 1.4) (after giving effect to the exclusion of the Excluded Assets, such assets are hereinafter collectively referred to as the "Transferred Assets"), free and clear of all Liens (as defined in Section 3.5(b)) (except for Permitted Liens (as defined in Section 3.5(a)). The Transferred Assets include, without limitation, the following, as they relate to the Business:

(a) all Intellectual Property (as defined in Section 3.10) incorporated or embodied in any product or service of Seller or otherwise owned by Seller or used or held for use in the conduct of the Business as presently conducted or proposed to be conducted (the "Transferred Intellectual Property"), including, without limitation, the Intellectual Property set forth on Schedule 1.1(a);

(b) all books, ledgers, files, documents, lists, plans, schematics, drawings, specifications, studies, data, process documentation, product specifications, records relating to the operation of the Business, including, without limitation, customer lists, customer programs, customer special pricing, customer price files, bills of material, and records, creative materials, marketing and promotional materials and personnel records;

(c) the tangible personal property (such as machinery, equipment, trucks, vehicles, forklifts, trailers, molds and tools) as listed on Schedule 1.1(c);

(d) all inventory, finished goods, work in process, raw materials, supplier manufactured and purchased parts and components (excluding obsolete finished goods and obsolete raw materials) ("Inventory") of Seller related to the Business;

(e) contracts and agreements listed on Schedule 1.1(e) "Assumed Contracts"; and

(f) approvals, permits, orders, registrations, certificates, variances and similar rights obtained from governments or agencies thereof.

1.2 **Assignability and Consents.** Other than the Pre-Close Required Consents (as defined in Section 2.1(a)), which consents must be delivered in connection with the Closing), Seller shall take, or cause to be taken by others, all reasonably necessary actions required to obtain or satisfy, without undue delay after signing hereof, all consents, novations, approvals, authorizations, requirements (including filing and registration requirements), waivers and agreements necessary to the transfer, sale, conveyance, assignment, or sublease of the Transferred Assets, including, Assumed Contracts ("Required Consents"); provided that Seller shall not be required to make any payments or concessions of material value as consideration for obtaining or satisfying any Required Consents. Subject to the proviso in Section 1.6, until the respective Required Consent has been obtained, the Parties shall treat each other in their internal relationship and put each other economically in the same position as if the Required Consent had been obtained with effect as of the Effective Date, including any sub-licensing, sub-leasing or sub-contracting to Purchaser of any enforcements of Seller of any rights under the respective Transferred Assets or Assumed Contracts. In particular, prior to obtaining the respective Required Consent, Purchaser shall (i) obtain full benefit of all rights, benefits and claims arising out of or in connection with the Transferred Assets, including the Assumed Contracts and (ii) to the extent legally possible, carry out, perform and complete all obligations and liabilities of the Seller under or in connection with the respective Transferred Assets, including the Assumed Contracts, after the Effective Date.

1.3 **Purchase Price.** The aggregate purchase price to be paid for the Transferred Assets by the Purchaser shall be One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) (the "Purchase Price") to be paid as follows:

(a) Nine Hundred Forty-Six Thousand Six Hundred Dollars (\$946,600) shall be paid to Seller by Purchaser at the Closing, delivered via wire transfer of immediately available funds to an account designated by Seller at least two (2) business days prior to the Closing;

(b) Twenty-Six Thousand Seven Hundred Dollars (\$26,700) shall be paid to Seller by Purchaser upon Seller's delivery to Purchaser of written evidence satisfactory to Purchaser that Seller has paid Ron Castleman \$26,700, delivered via wire transfer of immediately available funds to an account designated by Mr. Castleman in writing at least two (2) business days prior to the Closing; provided, however, in the event Seller does not deliver such written evidence to Purchaser within nine (9) business days of the Effective Date, Purchaser may, on the tenth business day following the Effective Date or thereafter, pay \$26,700 to Mr. Castleman directly, in which event Purchaser shall no longer owe Seller any further payment in respect of amounts under this Section 1.3(b);

(c) Twenty-Six Thousand Seven Hundred Dollars (\$26,700) shall be paid to Seller by Purchaser upon Seller's delivery to Purchaser of written evidence satisfactory to Purchaser that Seller has paid Doug Harbert \$26,700, delivered via wire transfer of immediately available funds to an account designated by Mr. Harbert in writing at least two (2) business days prior to the Closing; provided, however, in the event Seller does not deliver such written evidence to Purchaser within nine (9) business days of the Effective Date, Purchaser may, on the tenth business day following the Effective Date or thereafter, pay \$26,700 to Mr. Harbert directly, in which event Purchaser shall no longer owe Seller any further payment in respect of amounts under this Section 1.3(c); and

(d) (i) One Hundred Thousand Dollars (\$100,000) shall be paid to Seller by the Purchaser within five (5) business days of the first anniversary of the Closing, (ii) Seventy-Five Thousand Dollars (\$75,000) shall be paid to Seller by Purchaser within five (5) business days of the second anniversary and (iii) Seventy-Five Thousand Dollars (\$75,000) shall be paid to Seller by Purchaser within five (5) business days of the third anniversary of the Closing, in each case, delivered via wire transfer of immediately available funds to an account designated by Seller at least two (2) business days prior to such payment (each, a "Holdback Payment" and collectively, the "Holdback Amount"); provided, however, notwithstanding the foregoing, the Holdback Amount and any Holdback Payment may, at Purchaser's discretion, be reduced by any amount permitted to be deducted from such amount pursuant to Article VI hereof.

1.4 **Excluded Assets.** Seller shall retain all of its right, title and interest in and to all of, and shall not Transfer to the Purchaser any of assets which are not described in Section 1.1 (the "Excluded Assets"). Seller is responsible and shall bear all of the costs and expenses associated with, or related to, the disposal and/or rigging to move any Excluded Assets.

1.5 **Retained Liabilities.** Purchaser shall not assume and shall have no liability, obligation or commitment for any debt, liability, obligation or expense ("**Liability**") other than the Assumed Liabilities described in Section 1.6. Seller shall remain liable for the liabilities of the Business, except for Assumed Liabilities ("**Retained Liability**") and collectively, as "**Retained Liabilities**". For clarification and without limiting the generality of the foregoing, Purchaser shall not assume and shall have no liability, obligation or commitment for any debt, liability, obligation or expense:

(a) for products manufactured, software sold or licensed or services rendered by Seller or any of its affiliates, including, without limitation, product liability, and liabilities in respect of credit balances, credit memos and all other amounts due to sales representatives, dealers, and customers of the Business, and product warranty liability;

(b) for any environmental condition or contamination;

(c) for income, franchise, transfer, sales, use and other taxes of Seller whether relating to the Business or the Software and whether incurred prior to the Closing, and including, without limitation, any tax, such as arising on the sale of the Transferred Assets and for taxes based on, or measured by, any income or gain realized upon the transfer of the Transferred Assets hereunder;

(d) for making payments or providing benefits of any kind to Seller's employees or former employees (including, without limitation, any severance obligation or other obligation triggered as a result of the consummation of the transactions contemplated herein) arising out of any employee benefit plan established or maintained by Seller;

(e) for any litigation, claims, investigations or proceedings, arising out of, or relating to, an occurrence or event happening prior to the Effective Date including, without limitation, legal fees in connection with such litigation and claims;

(f) related to indebtedness of Seller,

(g) to pay for any licenses, products, goods, raw materials, or services delivered or provided to the Business prior to the Effective Date;

(h) pertaining to the Business based upon acts or omissions occurring prior to the Effective Date;

(i) arising out of, or resulting from, noncompliance prior to the Effective Date with any foreign, national, regional or local laws, statutes, ordinances, rules, regulations, orders, determinations, judgments or directives, whether legislatively, judicially or administratively promulgated (including, without limitation, any environmental, health and safety liabilities or obligations whether or not arising out of or resulting from the Seller's non-compliance with environmental, health or safety laws or regulations)

(j) all Liabilities related to current or former employees, independent contractors, officers, directors or unitholders or shareholders of the Seller or Sole Member; and

(k) all Liabilities relating to or arising in respect of an Excluded Asset.

The foregoing liabilities contained in subsections (a) through (k) shall be considered Retained Liabilities.

1.6 **Assumed Liabilities.** On the Effective Date, except as provided in Section 1.5 above, Purchaser shall assume and agree to pay, perform and discharge when due the following, and exclusively the following, liabilities and obligations of Seller (collectively referred to as, "**Assumed Liabilities**"):

(a) All Liabilities of the Business arising under the terms of the Assumed Contracts, but only to the extent such Liabilities arise or accrue after the Effective Date in the ordinary and normal course and consistent with the representations, warranties, covenants, obligations and agreements set forth in this Agreement; provided, however, that Purchaser shall not assume or be responsible for (i) any such Liabilities which arise from breaches of such Assumed Contracts or defaults thereunder by Seller, prior to or on the Effective Date, and (ii) any

Liabilities (including compensation payments and take-back obligations) that arise out of or in connection with the expiry, or the termination or cancellation by Seller or the respective other contractual party, of any Assumed Contract for which the Required Consent has not been granted, all of which Liabilities (i) and (ii) shall constitute Retained Liabilities.

1.7 **Non-Assignable Contracts.** Nothing in this Agreement shall be construed as an assignment or an attempted assignment of (a) any contract that is non-assignable without the consent of the other party thereto, unless and until such consent has been granted, or (b) any contract or claim as to which all the remedies for the enforcement thereof enjoyed by Seller would not pass to Purchaser as an incident of the assignment provided for by this Agreement. The Seller covenants and agrees that in any such case the beneficial interest in and to any such contract or claims shall in any event pass hereby to Purchaser.

ARTICLE II

CLOSING; TRANSFER OF ASSETS

2.1 **Closing; Instruments of Conveyance and Transfer.** The closing (“Closing”) of the transactions contemplated by this Agreement shall be effective as of 11:59 p.m. EDT on the Effective Date. At the Closing:

(a) Seller shall deliver to the Purchaser (and Purchaser’s obligation to execute this Agreement and consummate the transactions contemplated hereby shall be conditioned upon Seller’s delivery to the Purchaser of):

(i) such bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser, as shall be effective to vest in Purchaser all of Seller’s right, title and interest in and to the Transferred Assets,

(ii) a copy of the written consent of the Sole Member of Seller authorizing this Agreement and the transactions contemplated hereby,

(iii) an Employment Agreement in the form attached hereto as Exhibit A duly executed by Dr. Izundu Obinelo (the “Employment Agreement”),

(iv) a certificate of the Secretary of Seller certifying (i) that attached thereto are true and complete copies of all written consents adopted by the Sole Member of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, (ii) that all such consents are in full force and effect and are all the consents adopted in connection with the transactions contemplated hereby and thereby, (iii) to the incumbency of the names and signatures of the officers of Seller and (iv) the ownership of the equity interests of the Seller as of the date hereof.

(b) Purchaser shall deliver to Seller (and Seller’s obligation to execute this Agreement and consummate the transactions contemplated hereby shall be conditioned upon Purchaser’s delivery to the Seller of):

(i) the Purchase Price payable to Seller pursuant to Section 1.3,

(ii) a copy of the written consent of the Sole Member of Purchaser authorizing this Agreement and the transactions contemplated hereby.

2.2 **Further Assurances.** From time to time after the Effective Date, and without further consideration, Seller shall execute and deliver such other instruments of conveyance, assignment, transfer and delivery, and take such other actions as Purchaser may reasonably request in order more effectively to Transfer to Purchaser, and to place Purchaser in possession or control of, all of the rights, properties, assets and businesses intended to be transferred hereunder, to reasonably assist in the collection of any and all such rights, properties and assets, and to enable Purchaser to exercise and enjoy all of the rights and benefits of Seller with respect thereto.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

3.1 **Organization**. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Hampshire. Seller has no subsidiaries, does not own any capital stock of any other corporation, and does not otherwise directly or indirectly control any corporation, partnership, limited liability company, business, trust or other entity. Seller is duly qualified to do business as a foreign corporation and is 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 by it, or the nature of the activities conducted by it, requires such qualification.

3.2 **Power and Authority**. Seller has full power and authority to own its properties and assets, and to carry on its business as presently conducted. Seller has the full power and authority to execute, enter into and carry out the provisions of this Agreement. All corporate action on the part of Seller and the shareholders of Seller necessary for the authorization, execution, delivery and performance of all obligations of Seller under this Agreement has been taken, and this Agreement constitutes the valid and legally binding obligation of Seller, enforceable in accordance with its terms, except as such validity, binding nature and enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity or other laws of general application relating to or affecting enforcement of creditor's rights.

3.3 **No Violation**. Neither the execution and delivery of this Agreement nor the performance by Seller of its obligations hereunder nor the consummation of the transactions contemplated hereby will (with or without the lapse of time) (a) contravene any provision of the Certificate of Formation, Operating Agreement or any other organizational document of Seller or any written consent adopted by the Sole Member of Seller of all or any of the holders of any equity interest in the Seller; (b) violate, be in conflict with, constitute a default under, permit the termination of, cause the acceleration of the maturity of any debt or obligation of Seller under, require the consent of any other party to, constitute a breach of, create a loss of a material benefit under, or result in the creation or imposition of any Lien, other than Permitted Liens, upon any of the Transferred Assets under, any mortgage, indenture, lease, contract, agreement, instrument or commitment to which Seller is a party or by which it, any of its assets or properties, or the Business may be bound; (c) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller or the Business is subject or by which Seller or the Business are bound; or (d) result in any shareholder of Seller having the right to exercise dissenters' appraisal rights.

3.4 **Consents and Approvals of Governmental Authorities**. No consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required to be made or obtained by Seller in connection with their execution, delivery and performance of this Agreement.

3.5 **Title to Properties; Encumbrances**.

(a) Seller has good and marketable title to all of its respective properties and assets constituting all or part of the Transferred Assets free and clear of any Liens, except (i) Liens for taxes (excluding Liens for taxes arising out of the Transfer of the Transferred Assets) not yet due and payable, and (ii) Liens described on Schedule 3.5, which will be discharged on the Effective Date (collectively, the "Permitted Liens").

(b) When used in this Agreement, "Lien" or "Liens" shall mean any pledge, security interest, conditional sale or other title retention agreement, encumbrance, mortgage, hypothecation, lien, easement, claim, right, covenant, restriction, defect in title, right of way, warrant, option or charge of any kind.

3.6 **Condition of Assets**. Notwithstanding the wear and tear from ordinary business operation, each of the tangible Transferred Assets is free from defects (patent and latent), is in reasonable operating condition and repair, and is adequate for the use to which it is being put, and no tangible asset is in need of major maintenance or major repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

3.7 **Equity Ownership**. Schedule 3.7 contains the name of each owner of equity interest in the seller and percentage of such ownership, (1) as of the Effective Date and (2) as a result of the consummation of the transactions contemplated hereby.

3.8 **Litigation; Compliance with Law**. There is no action, suit, investigation, claim, arbitration or litigation pending or, threatened against, affecting or involving any Seller or the Transferred Assets at law or in equity, or before or

by any court, arbitrator or any federal, state, provincial, foreign or local governmental authority, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing ("Governmental Authority"), and Seller is not operating under or subject to any order, award, judgment, decree or injunction of any court, arbitrator or Governmental Authority with respect to the Transferred Assets. No Governmental Authority has at any time challenged, questioned, or commenced or given notice of intention to commence any investigation relating to the Transferred Assets. Seller has complied with and is in compliance in all material respects with all laws, ordinances, regulations, awards, orders, judgments, decrees and injunctions applicable to Seller and to the Transferred Assets. Seller has obtained and hold all permits, licenses and approvals (none of which has been modified or rescinded and all of which are in full force and effect) from all Governmental Authorities necessary in order to own, use and maintain the Transferred Assets.

3.9 **Liabilities.** Except as identified on Schedule 3.9, there exist no liabilities of Seller relating to the Transferred Assets, contingent or absolute, matured or unmatured, known or unknown.

3.10 **Intellectual Property.**

(a) "Intellectual Property" means software, trademarks, trade names, service marks, brand names, patents, copyrights, issuances and pending applications for patents, registrations and pending applications for trademarks and service marks, registrations and pending applications for copyrights, expired patents, trademarks and copyrights, inventions, improvements, processes, know-how, formulae, patterns, designs, trade secrets, confidential information, algorithms, works of authorship, specifications, methods, technology, compositions, domain names and other intellectual property and proprietary rights

(b) All of Seller's Intellectual Property is free of any superior claim of others. Seller exclusively owns, or has the exclusive right to use, all Intellectual Property and tooling that is used or held for use in or necessary for the ordinary course of the Business as presently conducted or proposed to be conducted. The Transferred Intellectual Property is sufficient for the conduct of the Business as presently conducted and proposed to be conducted. The Transferred Intellectual Property is valid and enforceable. The consummation of the transactions contemplated hereby will not alter or impair any Transferred Intellectual Property or Purchaser's ownership or right to use or exploit any Transferred Intellectual Property. No claims have been asserted, and no claims are pending, by any Person regarding the use or exploitation of any Intellectual Property, or challenging or questioning the validity, enforceability or effectiveness of any Transferred Intellectual Property or any license or agreement. Neither the Software, the products manufactured or sold by the Business, the Transferred Intellectual Property, nor the conduct of the Business conflicts with, misappropriates, violates or infringes upon any Intellectual Property or proprietary rights of any Person, and no activity of any other person conflicts with, misappropriates, violates or infringes upon any of the Transferred Intellectual Property. Seller has taken reasonable measures to protect the confidentiality of all trade secrets included in the Transferred Intellectual Property and all other Transferred Intellectual Property of a confidential nature. Each employee, contractor and consultant of Seller has entered into a written assignment and confidentiality agreement with Seller in a form made available to Purchaser prior to the date hereof. No open source, copyright or similar software ("Open Source") has been or is incorporated or embedded in, bundled with or linked to any Software in a manner that subjects any source code for any Software to any requirement to be licensed, made available, provided, contributed or distributed to any Person. None of the source code for any Software has been licensed, made available or disclosed to any Person or is subject to any obligation or requirement to be placed in escrow. Sole Member is the sole developer of the Software and no other Person wrote any of the source code or otherwise contributed to the development of the Software. Schedule 3.10 sets forth (i) all Intellectual Property that is issued or registered or the subject of a pending application and (ii) all software (including Open Source) incorporated or embedded in, bundled with or linked to any Software, including the third party software components listed therein ("Third Party Software Components") Except as set forth on Schedule 3.10, the Seller has a valid, enforceable, freely transferable license to use each Third Party Software Component, each of which is freely assignable to the Purchaser in connection with the transactions contemplated hereby.

3.11 **Customers.** A list of the names of the dealers, distributors and/or direct sale customers which constitute the ten (10) highest revenue generating sources of the Business (the "Customers") for each of the last three (3) fiscal years and the current fiscal year to date is set forth in Schedule 3.11, including the sales amount derived from each such Customer and from each country in which Seller conducts business. Seller has not received any notice and has no reason to believe that any such Customer (i) has ceased, or will cease, to use the products, goods or services of the Business (ii) has materially or will materially reduce the use of products, goods or services of the Business, or (iii) has sought, or is

seeking, to materially reduce the price it will pay for products, goods or services of the Business (other than requests for discounts and price reductions consistent with past practice).

3.12 **Material Contracts.** Schedule 3.12 lists all of the following agreements, understandings and arrangements, whether oral or written, (“Contracts”) to which Seller, or any assets or properties of Seller, is bound by, subject to or party to (collectively, the “Material Contracts”):

- (a) any Contract relating to the acquisition or disposition of any assets (other than purchases of inventory and supplies in the ordinary course of business) or any business (including through merger or other business combinations) of Seller,
- (b) any Contract under which Seller is or may become obligated to pay an amount pursuant to an indemnity, as a purchase price adjustment or otherwise in connection with any such acquisition or disposition transaction,
- (c) any Contract relating to the employment or engagement of any person by Seller (including any contract or commitment to any labor union and any employment or consulting agreement with any person), or any bonus, deferred compensation, pension, severance, profit sharing, stock option, employee stock purchase, retirement or other employee benefit plan of Seller,
- (d) any other Contract evidencing Debt of Seller or pursuant to which a third party has guaranteed the Indebtedness of Seller,
- (e) any Contract relating to capital expenditures of Seller,
- (f) any loan or advance to, or investment in, any other Person or entity or any Contract relating to the making of any such loan, advance or investment,
- (g) any Contract under which Seller provides any advice or services to any third party, including any management service, consulting or any other similar type Contract,
- (h) any Contract with respect to the manufacture of products sold by Seller,
- (i) any Contract related to the sourcing of materials used in the manufacture of Seller’s products,
- (j) any Contract with respect to the purchase for resale of finished products sold by third parties,
- (k) any Contract with wholesale distributors of Seller’s products,
- (l) any sales representative or any similar type Contract,
- (m) any Contract for the future sale of any of Seller’s products or services other than purchase orders received in the ordinary course of business,
- (n) any Contract under which Seller is a licensor of Intellectual Property or provider of services, or agrees to encumber, not assert, transfer or sell rights in or with respect to any Intellectual Property or to provide source code to any third party,
- (o) any Contract (i) under which Seller is a licensee of any Intellectual Property (except for “shrink wrap” and similar widely available commercial end-user licenses that have an individual acquisition cost of \$10,000 or less) or (ii) providing for the development of any Intellectual Property, independently or jointly, by or for Seller,
- (p) any Contract to license or authorize any third party to manufacture or reproduce any of the products, services, technology or Intellectual Property of Seller,

(q) any Contract of indemnification or warranties or any Contract containing any support, maintenance or service obligation or cost on the part of Seller,

(r) any Contract limiting the freedom of Seller to engage in any line of business or geographic market or to compete with any other Person or to use any particular information or to hire or solicit any other Person, or granting most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights and/or terms to any Person, or otherwise limiting the right of Seller to sell, distribute or manufacture any products or services or to purchase or otherwise obtain any software, components, parts, subassemblies or services,

(s) any Contract concerning confidentiality of the protection of trade secrets and other proprietary information or Intellectual Property,

(t) any Contract relating to the lease of personal property (including capitalized leases),

(u) any service or maintenance agreements or any similar type Contract which has a term of at least one year or provides for aggregate payments by or to Seller in excess of \$10,000,

(v) any Contract relating to any partnership or joint venture or that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons or the payment of royalties to any other Person in excess of \$10,000,

(w) any Contract between Seller and any Seller and any other agreement or arrangement with respect to advances or loans to affiliates of Seller,

(x) any Contract which involves an amount or provides a benefit of \$10,000 or more and is not unilaterally cancelable by Seller without penalty upon notice of not longer than 30 days, and

(y) any other Contract not listed in clauses (a) through (x) above that individually has a value in excess of \$10,000 or is otherwise material to Seller or its business, operations, financial condition, properties or assets.

Seller has delivered to Purchaser true and complete copies of all the Material Contracts (including all amendments, supplements or other modifications thereof). With respect to each Material Contract: (i) it is legal, valid, binding, enforceable and in full force and effect; (ii) subject to obtaining the Required Consents, it will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (iii) Seller and, to Seller's knowledge, each other party to such Contract have performed all obligations required to be performed by them under such Contract and no party is in breach or default, and no event has occurred which with notice or lapse of time or both would constitute a breach or default, or permit termination, modification or acceleration, under such Contract; and (iv) no party has repudiated any provision of such Contract. Seller is not a party to any Contract material to the business of Seller which is not listed in Schedule 3.12. There are no unfulfilled customer orders or commitments to process, manufacture, or deliver products or perform services where the completion of performance by Seller or its assignee will result in a loss on the balance of the contract. No purchase order or commitment of Seller is in excess of normal requirements, nor are prices provided therein in excess of current market prices for products or services to be provided thereunder. Seller has no general or special powers of attorney outstanding.

3.13 **Product Liability**. Seller has no liability or has received any claims arising out of any injury to Persons or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by Seller (or any of its predecessors) thereof. Seller has provided to Purchaser, Seller's product liability history for the past five (5) years and current claims. No product designed, manufactured or sold by the Business: (a) contains or contained any material design or manufacturing defect; (b) is, or has been, subject to any product recall voluntarily made or required by any Governmental Entity; or (c) to Seller's knowledge, is or has been, subject to any investigation by any Governmental Entity, including, without limitation, the U.S. Consumer Product Safety Commission. All products designed, manufactured or sold by the Business contain adequate warnings, the content and display of which conform to applicable laws and legal standards and current industry practice. All product labeling of the Business is, and has been, in

conformity with applicable laws (including rules and regulations thereunder). All of the products of the Business marked as certified by Underwriters Laboratories or the equivalent thereof are so certified.

3.14 **Inventory.** The Inventory (a) consists of items that are good and merchantable within normal trade tolerances, and (b) is of a quality and quantity presently usable or saleable in the ordinary course of the Business (subject to applicable reserves).

3.15 **Environmental Matters.**

(a) Seller has complied, and is in compliance, with all Environmental, Health and Safety Laws. No unresolved or pending charge complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed, commenced or threatened against Seller or its Predecessors alleging any failure to comply with any Environmental, Health and Safety Law.

(b) Seller has no liability (and there is no basis related to the past or present operations or facilities of Seller for any present or future action against Seller giving rise to any liability) under any Environmental, Health or Safety Law concerning Release or threatened Release of Hazardous Substances, public or employee health and safety, or pollution or protection of the environment.

(c) Seller has no liability (and Seller has not handled or disposed of any substance, arranged for the disposal of any substance, or owned or operated any property or facility in any manner that could form the basis for any present or future action against Seller giving rise to any liability) for damage to any site, location, or body of water (surface or subsurface) or for illness or personal injury.

(d) Seller has no liability and Seller has not exposed any employee to any substance or condition (including, without limitation, asbestos) that could form the basis for any present or future action against Seller giving rise to any liability, for any illness of or personal injury to any employee.

(e) No Hazardous Substance has or ever has been Released into or from any site currently or heretofore owned, leased or otherwise used by Seller.

For purposes of this Section 3.16, (i) "Environmental, Health and Safety Laws" mean all federal, state, local and foreign laws, rules, regulations, standards or codes or any orders, licenses, franchises, permits or similar rights granted by a Governmental Entity that have the force or effect of law, in each case relating to (a) releases or threatened releases of any Hazardous Substances, (b) pollution or protection of public health or the environment or worker safety or health or (c) the generation, manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances including regulations and directives related to the Restriction on certain Hazardous Substances (Directive 2002/95/EC) and the Waste Electrical and Electronic Equipment (Directive 2002/96/EC) compliance; (ii) "Hazardous Substances" means any pollutant, petroleum or any fraction thereof, contaminant or toxic or hazardous material (including toxic mold), substance or waste; and (iii) "Release" means any actual, threatened or alleged spilling, leaking, pumping, pouring, emitting, dispersing, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Substance into the environment that may cause a Liability under any Environmental, Health or Safety Law (including the disposal or abandonment of barrels, containers, tanks or other receptacles containing or previously containing any Hazardous Substance).

3.16 **Disclosure.** All facts of material importance to the Transferred Assets and to the Business has been fully and truthfully disclosed to Purchaser in this Agreement. No representation or warranty by Seller in, and no document, statement, certificate, schedule or exhibit to be furnished or delivered to Purchaser pursuant to, this Agreement contains or will contain any untrue or misleading statement of a material fact or omits or will omit any fact necessary to make the statements contained herein or therein, in light of the circumstances under which made, not materially misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to Seller as follows:

4.1 **Organization.** Purchaser is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 **Power and Authority.** Purchaser has full power and authority to own its properties and assets, to carry on its business as presently conducted and to enter into and carry out the provisions of this Agreement. All action on the part of Purchaser and its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of all obligations of Purchaser under this Agreement has been taken and this Agreement constitutes the valid and legally binding obligation of Purchaser, enforceable in accordance with its terms, except as such validity, binding nature and enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditor's rights.

4.3 **No Violation.** Neither the execution and delivery of this Agreement nor the performance by Purchaser of its obligations hereunder nor the consummation of the transactions contemplated hereby will (a) contravene any provision of the Certificate of Formation or Operating Agreement of Purchaser; (b) violate, or be in conflict with, or constitute a default under, any agreement to which Purchaser is a party; or (c) to the best of Purchaser's knowledge, violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Purchaser is subject or by which it or any of its assets or properties are bound.

4.4 **Consents and Approvals of Governmental Authorities.** No consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required to be made or obtained by Purchaser in connection with its execution, delivery and performance of this Agreement.

ARTICLE V

CERTAIN POST-EFFECTIVE COVENANTS

The Parties agree as follows with respect to the period following the Closing:

5.1 **General.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor below).

5.2 **Transition.** The Seller will not directly or indirectly, take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of any of the Business from maintaining the same relationships with Purchaser after the Closing as it maintained with Seller prior to the Closing.

5.3 **Public Statements or Releases.** Neither Purchaser nor Seller, directly or indirectly, will make, issue or release any public or industry announcement, statement or acknowledgment of the existence of the transactions provided for herein, except by mutual consent and except as required by law.

5.4 **Confidentiality.** Any and all non-public information concerning the Parties hereto or the Business shall be kept confidential by the Parties and not to divulged, or disclosed, or used for its benefit or purpose at any time in the future unless it has otherwise become public (except that, following the Effective Date, Purchaser may use any confidential information concerning the Business as it sees fit). The information intended to be protected hereby shall include, but not be limited to, financial information, customers, suppliers, sales representatives, and anything else having an economic or pecuniary benefit to Seller, Purchaser or the Business.

5.5 **Insurance.** Purchaser acknowledges that the Business and the Transferred Assets have been covered for certain periods under insurance policies maintained by Seller or certain of its affiliates. Seller and Purchaser hereby agree that the coverage under these policies will cease to apply to the Business and the Transferred Assets for occurrences after the Effective Date. Seller agrees to allow the Business to continue to be covered by the insurance policies of the Seller for pre-Closing occurrences; provided, however, that Purchaser reimburse Seller for all charges to Seller or any of its affiliates in existence on, or incurred after, the Effective Date in connection with claims under such policies. Purchaser shall, promptly after receipt of notice and supporting documentation (and in any event within 30 days), reimburse Seller for all such amounts charged to the Seller.

5.6 **Non-Competition and Non-Solicitation.**

(a) Acknowledgements. Seller and Sole Member acknowledge that (i) the covenants and agreements in this Section 5.6 are a condition precedent to Purchaser's obligations to purchase the Transferred Assets from Seller under this Agreement, (ii) Purchaser would not purchase the Transferred Assets but for the agreements of Seller and Sole Member in this Section 5.6, and (iii) Purchaser is paying Seller fair value as consideration to acquire the Transferred Assets, including all of its goodwill and trade secrets.

(b) Covenants. For a period three (3) years from the date hereof (the "Restricted Period") Seller and Sole Member agree that they will not:

(i) directly or indirectly, except on behalf of Purchaser or any of its affiliates, contact or seek to do business with actual or prospective customers of Purchaser or any of its affiliates with whom Sole Member had sales related contact during the preceding two (2) years, or about which Sole Member acquired confidential information through his employment with Purchaser, for the purposes of providing any service that is competitive with the services offered by Purchaser or any of its affiliates.

(ii) directly or indirectly, except on behalf of Purchaser or any of its affiliates, solicit, recruit, or induce or attempt to solicit, recruit, or induce, in any manner whatsoever (though this shall not be deemed to include general job placements and advertisements which are not specifically targeting employees of Purchaser or any of its affiliates), any (A) employee of Purchaser or its affiliates or (B) employee whose employment with Purchaser or its affiliates was or is terminated within six (6) months preceding such actual or attempted solicitation, recruitment or inducement, to leave the employ of Purchaser and/or to seek or accept employment with Seller, Sole Member or any such Person, nor shall Sole Member negotiate with any such employee while Sole Member is in the employ of the Company with respect to such employee's present or future employment.

(iii) directly or indirectly, except on behalf of Purchaser or any of its affiliates, engage in or become associated with a Competitive Activity (as defined below) or persuade or encourage, or attempt to persuade or encourage, any business customers, business partners, or business affiliates of Purchaser or any of its affiliates to cease doing business with Purchaser or any of its affiliates or to engage in any business competitive with Purchaser or any of its affiliates on its own or with any Competitor (as defined below) of Purchaser or any of its affiliates within North America. Seller or Sole Member shall be considered to have "engaged in or become associated with a Competitive Activity" if the Seller or Sole Member, as applicable, becomes directly or indirectly involved as an owner, principal, employee, officer, director, manager, independent contractor, representative, stockholder, financial backer, agent partner, member, advisor, lender, or in any other individual or representative capacity with any individual, partnership, corporation or other organization that is engaged in a Competitive Activity including, but not limited to, Liebert Corporation and Schneider Electric and their respective affiliates (a "Competitor"). "Competitive Activity" shall mean any activity in which any individual, partnership, corporation, or other organization is engaged in any and all aspects of the business of Purchaser and its subsidiaries, which includes, but is not limited to customized airflow management systems and engineered heating, cooling and ventilation systems and the business of developing enterprise-level data center infrastructure management solutions. Seller and Sole Member will not circumvent the purpose of any restriction by engaging in business outside the geographic region covered by the above definition through remote means like telephone, correspondence, or computerized communication.

(c) Remedies. Seller and Sole Member further agree that monetary damages cannot fully compensate Purchaser in the event of a violation of the restrictive covenants of this Section 5.6. In the event of a breach or threatened breach of this Section 5.6, Purchaser or any of its affiliates may, in addition to other rights and remedies existing in their favor, apply to any court of competent jurisdiction for specific performance and/or injunctive relief in order to enforce or prevent any violation of the provisions hereof (without posting a bond or other security). No waiver of any violation hereof shall be implied by Purchaser's forbearance or failure to take action in pursuance hereof.

(d) Enforcement. All covenants and provisions of this Section 5.6 shall constitute a series of separate covenants, and if any particular portion of this Section 5.6 shall be adjudicated invalid or unenforceable, the same shall be deemed deleted without affecting the validity or enforceability of other portions or provisions hereof, and such deletion shall apply only with respect to the operation of said paragraphs in the particular jurisdiction in which such adjudication is made. Further, to the extent that any provision hereof is deemed unenforceable by virtue of its scope in terms of territory, length of time, scope of activities or otherwise, but may be made enforceable by limitations or revisions thereon, the

parties agree that such limitations or revisions may be made so that the same shall, nevertheless, be enforceable to the fullest extent permitted by law.

5.7 **Change of Corporate Name.** Promptly after the Closing, Seller shall file a duly executed and acknowledged certificate of amendment to Seller's certificate of incorporation or other appropriate document which is required to change Seller's corporate name to a new name bearing no resemblance to its present name so as to make Seller's present name available to Buyer. Upon the reasonable request of Buyer, Seller shall also provide to Buyer (or to the relevant State agency), a form of consent, assignment or other document allowing Buyer to use a corporate name similar to that of Seller.

5.8 **Receivables.** From and after the Closing, if Seller or Sole Member or any of their respective affiliates receives or collects any funds relating to any Assumed Contract or any other Transferred Asset (including, but not limited to annual license, maintenance or subscription service fees), Seller or its affiliate shall remit such funds to Purchaser within five (5) Business Days after its receipt thereof.

ARTICLE VI
SURVIVAL OF REPRESENTATIONS
AND WARRANTIES; INDEMNIFICATION

6.1 **Indemnification by Purchaser.** From and after the Effective Date, Purchaser shall indemnify and save harmless Seller and its officers, directors, partners, shareholders, successors and assigns (collectively, the "**Seller Indemnified Parties**") from and against any loss, claim, liability, damage, remedial costs, civil and criminal penalties or expenses or other damages of any kind or nature, including, without limitation, Seller's reasonable attorneys' fees incurred in connection with any of the foregoing (collectively, the "**Damages**"), reasonably incurred by any of the Seller Indemnified Parties in connection with each of the following:

- (a) any breach (or facts alleged by a third party, which if true would constitute a breach) by Purchaser of any representation or warranty in this Agreement;
- (b) any breach (or facts alleged by a third party which, if true, would constitute a breach) of any covenant, agreement or obligation of Purchaser contained in this Agreement; and
- (c) any Assumed Liability.

6.2 **Indemnification by Seller and Sole Member.** From and after the Effective Date, Seller and Sole Member shall, jointly and severally, indemnify, defend and save harmless Purchaser and its shareholders, officers, directors, agents, employees, representatives, successors, assigns and affiliates (collectively, the "**Purchaser Indemnified Parties**") from and against any Damages, reasonably incurred by any of the Purchaser Indemnified Parties in connection with each of the following:

- (a) any breach (or facts alleged by a third party, which if true would constitute a breach) by Seller of any representation or warranty in this Agreement;
- (b) any breach (or facts alleged by a third party which, if true, would constitute a breach) of any covenant, agreement or obligation of Seller contained in this Agreement;
- (c) any Retained Liability (regardless of whether there is a breach of a representation or warranty by Seller); and
- (d) any claim by any current or former employees, independent contractors, officers, directors or unitholders or shareholders of the Seller or Sole Member.

Purchaser may, at its option and in its sole and absolute discretion, satisfy any claim for indemnification against Seller and/or Sole Member, as applicable, under this **Article VI** by reducing the amount of the Holdback Amount and any Holdback Payment. In the event of any indemnification claim for which Seller has received notice from Buyer pursuant

to this Article VI, but which has not finally been resolved by the time of any Holdback Payment or payment of the Holdback Amount (“Outstanding Claim”), Purchaser may reduce the amount of the Holdback Amount and any Holdback Payment by Purchaser’s good faith and reasonable estimate of the amount of such Outstanding Claim. Not more than five (5) Business Days after final resolution of each Outstanding Claim, by agreement of the indemnifying Party or final adjudication pursuant to Article VI, Purchaser shall pay Seller an amount (if any) equal to the excess of Purchaser’s good faith and reasonable estimate of such Outstanding Claim, over the amount actually owed to the Purchaser Indemnified Parties pursuant to this Article VI.

6.3 **Survival of Representations and Warranties.** The representations and warranties of the Parties hereto contained in this Agreement shall survive the Effective Date and remain in full force and effect for a period of two years.

6.4 **Claims for Indemnification.** Whenever any claim shall arise for indemnification hereunder, the indemnified party shall promptly notify the indemnifying party of the claim and, when known, the facts constituting the basis for such claim, provided however, that no delay on the part of the indemnified party shall release the indemnifying party of any liability or obligation hereunder unless (and then solely to the extent) the indemnifying party thereby is damaged. In the event of any such claim for indemnification hereunder resulting from or in connection with any claim or legal proceedings by a third-party, the notice to the indemnifying party shall specify, if known, the amount or an estimate of the amount of the liability arising therefrom. The indemnified party shall not settle or compromise any claim by a third party for which it is entitled to indemnification hereunder without the prior written consent of the indemnifying party, which shall not be unreasonably withheld, unless suit shall have been instituted against it and the indemnifying party shall not have taken control of such suit after notification thereof.

6.5 **Third Party Indemnity Claims.** In connection with any claim to indemnify hereunder resulting from or arising out of any claim or legal proceeding by a person who is not a party to this Agreement, the indemnifying party, at its sole cost and expense may, upon written notice to the indemnified party, assume the defense of any such claim or legal proceeding if it acknowledges to the indemnified party in writing its obligations to indemnify the indemnified party with respect to all elements of such claim. In any such claim or proceeding, the indemnifying party will not consent to the entry of any judgment with respect to the matter, or enter into any settlement, which does not include a provision whereby the plaintiff or claimant in the matter releases the indemnified party from all liability with respect thereto. The indemnified party shall be entitled to participate in (but not control) the defense of any such action, with its counsel and at its own expense. If the indemnifying party does not assume the defense of any such claim or litigation resulting therefrom within 30 days after the date such claim is made, (a) the indemnified party may defend against such claim or litigation, in such manner it may deem appropriate, including, but not limited to, settling such claim or litigation, after giving notice of the same to the indemnifying party, on such terms as the indemnified party may deem appropriate, and (b) the indemnifying party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. If the indemnifying party thereafter seeks to question the manner in which the indemnified party defended such third party claim or the amount or nature of any such settlement, the indemnifying party shall have the burden to prove by a preponderance of the evidence that the indemnified party did not defend or settle such third party claim in a reasonably prudent manner.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 **Amendment; Waiver.** Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived, except by a written instrument signed by the Parties hereto (or, in the case of a waiver, by the Party granting such waiver). No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No failure of any Party hereto to insist upon strict compliance by the another Party with any obligation, covenant, agreement or condition contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 7.1.

7.2 **Fees and Expenses.** Except as otherwise provided in this Agreement, each of the Parties shall bear and pay its own costs and expenses incurred in connection with the origin, preparation, negotiation, execution and delivery of this Agreement and the agreements, instruments, documents and transactions referred to in or contemplated by this

Agreement (whether or not such transactions are consummated) including, without limitation, any fees, expenses or commissions of any of its advisors, attorneys, agents, finders or brokers.

7.3 **Notices.**

(a) All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including facsimile) and mailed, faxed or delivered:

(i) If to Purchaser, to:

CES Group, LLC
13200 Pioneer Trail, Suite 150
Eden Prairie, MN 55347
Attention: Eric Roberts, President
Facsimile: (952) 358-6700

with a copy to:

Nortek, Inc.
50 Kennedy Plaza
Providence, RI 02903
Attn: Kevin Donnelly, Sr. Vice President, General Counsel & Secretary

(ii) If to the Seller, to:

Dr. Izundu Obinelo
133 Ridge Road
Nashua, NH 03060
Facsimile: (603) 318-2041

(b) All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 7.3 (i) if delivered personally against proper receipt or by confirmed facsimile, shall be effective upon delivery and (ii) if delivered (A) by certified or registered mail with postage prepaid, (B) by Federal Express or similar courier service with courier fees paid by the sender or (C) by facsimile, shall be effective two business days following the date when mailed, couriered, or faxed, as the case may be. Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the Party sought to be charged with its contents.

7.4 **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Party. Any assignment which contravenes this Section 7.4 shall be void ab initio.

7.5 **Governing Law; Consent to Jurisdiction.** This Agreement and the legal relations among the Parties shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to the conflicts of laws principles thereof. Any dispute, action, litigation or other proceeding (including, without limitation, arbitration or mediation) concerning this Agreement may be instituted, maintained, heard and decided in State or Federal court empanelled in Rhode Island.

7.6 **Attorneys' Fees, Costs and Expenses.** In any action or proceeding arising out of or related to this Agreement or the transactions contemplated hereby, the prevailing party therein shall be entitled to recover from the other party the reasonable attorneys' and paralegals', accountants' and experts' fees, court costs, filing fees, publication costs and other expenses incurred by the prevailing party in connection therewith at trial and all appellate proceedings, and in all bankruptcy, administrative or similar proceedings.

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

7.8 **Headings.** The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof or define, limit or otherwise affect the meaning of any of the terms or provisions hereof.

7.9 **Entire Agreement.** This Agreement (which defined term includes the Schedules to this Agreement) embodies the entire agreement and understanding among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, among the Parties with respect thereto. There are no agreements, covenants, undertakings, representations or warranties with respect to the subject matter of this Agreement other than those expressly set forth or referred to herein.

7.10 **Severability.** Each term and provision of this Agreement constitutes a separate and distinct undertaking, covenant, term and/or provision hereof. In the event that any term or provision of this Agreement shall be determined to be unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall not affect any other term or provision of this Agreement, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein. Moreover, if any term or provision of this Agreement shall for any reason be held to be excessively broad as to time, duration, activity or subject, it shall be construed, by limiting and reducing it, so as to be enforceable to the extent permitted under applicable law as it shall then exist.

7.11 **No Third Party Beneficiaries.** Nothing in this Agreement is intended, nor shall anything in this Agreement be construed, to confer any rights, legal or equitable, in any Person (other than the Parties hereto and their respective heirs, distributees, beneficiaries, executors, successors and assigns), including, without limitation, any employee of either Party or any beneficiary of such employee.


7.12 **Miscellaneous.** The persons executing this Agreement in behalf of the Parties hereto are duly authorized to execute, acknowledge and deliver this Agreement. THIS AGREEMENT SHALL BE CONSTRUED WITHOUT REGARD TO THE PARTY OR PARTIES RESPONSIBLE FOR ITS PREPARATION, AND SHALL BE DEEMED AS PREPARED JOINTLY BY THE PARTIES. AMBIGUITIES SHALL NOT BE CONSTRUED AGAINST ANY PARTY, AND EACH PARTY REPRESENTS THAT IT READ THIS ENTIRE AGREEMENT, HAD THE OPPORTUNITY TO AVAIL ITSELF OF LEGAL COUNSEL, AND FREELY AND VOLUNTARILY ENTERS INTO THIS AGREEMENT, UNDERSTANDING THE LEGAL OBLIGATIONS HEREIN CREATED.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

SYNERGY THERMAL LLC

 5/10/2013

By: Dr. Izundu Obinelo

Title: Sole Member, Director & President

PURCHASER:


CES GROUP, LLC

By: Kevin W. Donnelly

Title: Vice President & Secretary

The following entity is a party to this Agreement for purposes of Sections 5.4, 5.6 & Article VI only:

DR. IZUNDO OBINELO

 5/10/2013

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:


SYNERGY THERMAL LLC

By: Dr. Izundu Obinelo

Title: Sole Member, Director & President

PURCHASER:

CES GROUP, LLC

By: Kevin W. Donnelly 

Title: Vice President & Secretary

The following entity is a party to this Agreement for purposes of Sections 5.4, 5.6 & Article VI only:

DR. IZUNDO OBINELO

Schedule 3.10 – Intellectual Property

(i) Intellectual Property issued or registered or the subject of a pending application:

Registered Trademarks

- ActiveCFD

Patents and Patent Applications

- ActiveCFD Provisional Patent Filing (U.S. Provisional Application No.: 61/170,448)

(ii) Software (including Open Source) incorporated or embedded in, bundled with or linked to any Software:

No Open Source Code

Licenses to the following Development Software

- Microsoft Visual Studio 2010
- Microsoft Visual Studio 6
- Microsoft Developer Studio 97
- QSetup Installation Suite

Licenses to the following Third-Party Software Components

Component	Manufacturer	Component Type	Version	License Type	Cost	Distribution License	Renewal Date
Sheridan Active Threed Plus Controls	Sheridan Software Systems Inc	ActiveX	2.01	Single Developer	?	Unlimited	N/A
Sheridan Calendar Widgets	Sheridan Software Systems Inc	ActiveX	1.08	Single Developer	?	Unlimited	N/A
MBAXP Modbus Master ActiveX Control	Witte Software	ActiveX	1.4.6	Single Developer	\$129	Unlimited	N/A
Network Communications Toolkit	ActiveXperts	ActiveX	4.2	Distribution	\$895	Unlimited	N/A
SocketTools Visual Edition	Catalyst Development	ActiveX	6.0	Single Developer	395	Unlimited	N/A
CST ActiveX Library	Century Soar Technology	ActiveX	3.6	Single Developer	?	Unlimited	N/A
Formula One	Visual Components	ActiveX	5.0	Single Developer	?	Unlimited	N/A
First Impression	Visual Components	ActiveX	5.0	Single Developer	?	Unlimited	N/A