

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Aleri Group, Inc.		01/22/2010	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Sybase, Inc.		
Street Address:	One Sybase Drive		
City:	Dublin		
State/Country:	CALIFORNIA		
Postal Code:	94568		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2811052	ALERI	
CORRESPONDENCE DATA			
Fax Number:	(617)832-7000		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	617.832.1000		
Email:	usrademark@foleyhoag.com		
Correspondent Name:	Charles Weinstein, Esq., Foley Hoag LLP		
Address Line 1:	155 Seaport Boulevard		
Address Line 4:	Boston, MASSACHUSETTS 02210		
ATTORNEY DOCKET NUMBER:	02164-00035		
NAME OF SUBMITTER:	Charles E. Weinstein, Esq.		
Signature:	/CEW/		
Date:	03/04/2010		

OP \$40.00 2811052

Total Attachments: 16

source=Assignment_2811052 ALERl#page1.tif
source=Assignment_2811052 ALERl#page2.tif
source=Assignment_2811052 ALERl#page3.tif
source=Assignment_2811052 ALERl#page4.tif
source=Assignment_2811052 ALERl#page5.tif
source=Assignment_2811052 ALERl#page6.tif
source=Assignment_2811052 ALERl#page7.tif
source=Assignment_2811052 ALERl#page8.tif
source=Assignment_2811052 ALERl#page9.tif
source=Assignment_2811052 ALERl#page10.tif
source=Assignment_2811052 ALERl#page11.tif
source=Assignment_2811052 ALERl#page12.tif
source=Assignment_2811052 ALERl#page13.tif
source=Assignment_2811052 ALERl#page14.tif
source=Assignment_2811052 ALERl#page15.tif
source=Assignment_2811052 ALERl#page16.tif

ASSIGNMENT OF INTELLECTUAL PROPERTY

This ASSIGNMENT OF INTELLECTUAL PROPERTY (this “**Assignment**”) is made as of January 22, 2010 by Aleri Group Inc., a Delaware corporation (“**Parent**”), Aleri Inc., a Delaware corporation (“**Aleri Inc.**”), and Aleri UK Limited, a UK company (“**Aleri UK**,” and together with Parent and Aleri Inc., each, an “**Assignor**,” and collectively, “**Assignors**”), for the benefit of Sybase, Inc., a Delaware corporation (“**Assignee**”).

RECITALS

A. Assignee and Parent have entered into that certain Asset Purchase Agreement dated as of January 22, 2010 (the “**Asset Purchase Agreement**”). Capitalized terms that are used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Asset Purchase Agreement.

B. Pursuant to the Asset Purchase Agreement, Parent has agreed, among other things, to sell, assign, transfer, convey and deliver, or to cause the applicable Company Subsidiary of Parent to sell, assign, transfer, convey and deliver, and Assignee has agreed to purchase, acquire and accept, the Assets, in each case all upon the terms and subject to the conditions set forth therein.

C. Pursuant to Section 2.1(a) of the Asset Purchase Agreement, each Assignor desires to sell, assign, transfer, convey and deliver to Assignee all of such Assignor’s right, title and interest in, to and under all Company-Owned Intellectual Property and, to the extent there is no third party restriction on the right to transfer the interests therein, all other Company Products Intellectual Property, and all other Intellectual Property Rights owned by the Company or a Company Subsidiary (the “**Assigned Intellectual Property**”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Each Assignor hereby sells, assigns, transfers, conveys and delivers to Assignee, its successors and assigns, free and clear of all Encumbrances, all of such Assignor’s entire right, title and interest in, to and under the Assigned Intellectual Property, the same to be held and enjoyed by Assignee for its own use and enjoyment, and for the use and enjoyment of its successors, assigns and other legal representatives, to the end of the term or terms for which the Assigned Intellectual Property is or may be licensed, granted or reissued as entirely as the same would have been held and enjoyed by such Assignor had this sale, assignment, transfer, conveyance and delivery not been made; together with all claims for damages by reason of past infringements of the Assigned Intellectual Property, with the right to sue for and collect the same for its own use and benefit, and for the use and on behalf of its successors, assigns and other legal representatives. Each Assignor acknowledges that it shall not have any further rights to the Assigned Intellectual Property, including without limitation any licenses to the Assigned Intellectual Property, and that any further modification, improvement or invention by Assignee based on or in connection with the Assigned Intellectual Property will be solely owned by Assignee.

2. Further Assurances. At any time and from time to time after the date hereof, at Assignee's reasonable request and without further consideration therefor, each Assignor agrees that it will execute and deliver to Assignee such other instruments of sale, assignment, transfer, conveyance and delivery, provide such materials and information and take such other actions, as may reasonably be necessary in order more effectively to assign, transfer and convey unto Assignee, or confirm Assignee's title or rights in or to, all of the Assigned Intellectual Property assigned, transferred and conveyed by such Assignor to Assignee pursuant hereto, to put Assignee in actual possession and control of the Assigned Intellectual Property assigned, transferred and conveyed by such Assignor to Assignee pursuant hereto to the full extent permitted by applicable Law, and to assist Assignee in exercising and enjoying all rights and benefits appurtenant thereto.

3. Power of Attorney. Each Assignor hereby constitutes and appoints Assignee as such Assignor's true and lawful attorney in fact, with full power of substitution in such Assignor's name and stead, to take any and all steps, including proceedings at law, in equity or otherwise, to execute, acknowledge and deliver any and all instruments and assurances necessary or expedient in order to vest or perfect the aforesaid rights and causes of action more effectively in Assignee or to protect the same or to enforce any claim or right of any kind with respect thereto. Each Assignor hereby declares that the foregoing power is coupled with an interest and as such is irrevocable.

4. Conflict with Asset Purchase Agreement. Purchaser and Company hereby acknowledge and agree that the provisions of this Assignment shall not limit the full force and effect of the terms and provisions of the Asset Purchase Agreement, and that in the event of a conflict between the terms and provisions of this Assignment and the terms and provisions of the Asset Purchase Agreement, the terms and provisions of the Asset Purchase Agreement shall prevail, govern and control in all respects without limitation.

[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, Assignors, intending to be legally bound hereby, have duly executed this Assignment on the date first above written

ALERI GROUP INC

By 
Name: Dennis A. DeLoach
Title: President CEO

ALERI INC

By 
Name: Dennis A. DeLoach
Title: President CEO

ALERI UK LIMITED

By 
Name: James L. Conder
Title: Director

ACKNOWLEDGED AND AGREED TO BY:

SYBASE INC

By _____
Name:
Title

Date: January 11, 2010

[ASSIGNMENT OF INTELLECTUAL PROPERTY]

IN WITNESS WHEREOF, Assignors, intending to be legally bound hereby, have duly executed this Assignment on the date first above written.

ALERI GROUP INC.

By: _____
Name:
Title:

ALERI INC.

By: _____
Name:
Title:

ALERI UK LIMITED

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED TO BY:

SYBASE, INC.

By: *April Bjornstad*
Name: *April Bjornstad*
Title: *VP, Corporate Development.*



Date: January __, 2010

[ASSIGNMENT OF INTELLECTUAL PROPERTY]

ASSET PURCHASE AGREEMENT

Between

ALERI GROUP INC.

and

SYBASE, INC.

Dated as of January 22, 2010

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1 Certain Defined Terms.....	1
ARTICLE II PURCHASE AND SALE	8
Section 2.1 Assets to Be Sold	8
Section 2.2 Assumption and Exclusion of Liabilities.....	9
Section 2.3 Purchase Price; Allocation of Purchase Price.....	10
Section 2.4 Intentionally Left Blank.....	11
Section 2.5 Closing	11
Section 2.6 Closing Deliveries by the Company	11
Section 2.7 Closing Deliveries by Purchaser.....	12
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....	12
Section 3.1 Organization, Authority and Qualification	12
Section 3.2 Intentionally Left Blank.....	13
Section 3.3 Subsidiaries.....	13
Section 3.4 No Conflict.....	13
Section 3.5 Governmental Consents and Approvals.....	14
Section 3.6 Financial Information.....	14
Section 3.7 Intentionally Left Blank.....	14
Section 3.8 Absence of Certain Changes, Events and Conditions.....	14
Section 3.9 Litigation.....	15
Section 3.10 Compliance with Laws	15
Section 3.11 Material Contracts.....	16
Section 3.12 Intellectual Property.....	18
Section 3.13 Assets	24
Section 3.14 Employee Benefit Matters	25
Section 3.15 Labor Matters.....	26
Section 3.16 Employees.....	27
Section 3.17 Brokers.....	27
Section 3.18 No Liquidation, Insolvency, Winding-Up	27
Section 3.19 Customers	28
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	28
Section 4.1 Organization and Authority of Purchaser	28
Section 4.2 No Conflict.....	28
Section 4.3 Governmental Consents and Approvals.....	29
Section 4.4 Availability of Funds	29
ARTICLE V ADDITIONAL AGREEMENTS	29

Section 5.1	Conduct of Business Prior to the Closing	29
Section 5.2	Access to Information	29
Section 5.3	Confidentiality	30
Section 5.4	Regulatory and Other Authorizations; Notices and Consents	31
Section 5.5	Notice of Developments	32
Section 5.6	No Solicitation or Negotiation	32
Section 5.7	Use of Intellectual Property	33
Section 5.8	Excluded Liabilities	33
Section 5.9	Further Action	33
Section 5.10	Equipment	33
ARTICLE VI EMPLOYEE MATTERS		33
Section 6.1	Employees	33
Section 6.2	Transition Services	34
ARTICLE VII TAX MATTERS		34
Section 7.1	Tax Covenants	34
Section 7.2	Cooperation on Tax Matters	35
ARTICLE VIII CONDITIONS TO CLOSING		35
Section 8.1	Conditions to Obligations the Company	35
Section 8.2	Conditions to Obligations of Purchaser	36
ARTICLE IX TERMINATION AND WAIVER		37
Section 9.1	Termination	37
Section 9.2	Effect of Termination	37
Section 9.3	Waiver	37
ARTICLE X MISCELLANEOUS		38
Section 10.1	Expenses	38
Section 10.2	Notices	38
Section 10.3	Public Announcements	39
Section 10.4	Headings; Interpretation	39
Section 10.5	Severability	40
Section 10.6	Entire Agreement	40
Section 10.7	Non-Survival of Representations and Warranties; Limitation on Liability	40
Section 10.8	Assignment	40
Section 10.9	No Third Party Beneficiaries	40
Section 10.10	Amendment	41
Section 10.11	Governing Law	41
Section 10.12	Submission to Jurisdiction; Waiver of Jury Trial	41
Section 10.13	Counterparts	41

Section 10.14 Specific Performance41

Exhibit A	Assumption Agreement
Exhibit B	Assignment of Intellectual Property
Exhibit C	Bill of Sale
Exhibit D	License Agreement Amendment

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of January 22, 2010 (as hereafter amended, modified or supplemented, this “**Agreement**”), between Aleri Group Inc., a corporation organized and existing under the laws of Delaware (the “**Company**”) and Sybase, Inc., a corporation organized and existing under the laws of Delaware (“**Purchaser**”).

WITNESSETH:

WHEREAS, the Company is and each of the Company Subsidiaries are engaged in the business of providing enterprise-class complex event processing (CEP) technology and CEP-based solutions (the “**Business**”);

WHEREAS, the Company desires to sell to Purchaser, and Purchaser desires to purchase from the Company and the Company Subsidiaries, certain assets relating to the Business, and in connection therewith Purchaser is willing to assume certain liabilities of the Company and the Company Subsidiaries relating thereto, all upon the terms and subject to the conditions set forth herein; and

WHEREAS, concurrent with the closing of the transactions contemplated by this Agreement, the Company and Purchaser desire to amend that certain License Agreement by and between Purchaser and the Company (as assignee of and successor to Coral8, Inc. thereunder) dated as of December 31, 2008 to remove any limitations on Purchaser’s right to market itself as a Complex Event Processing vendor by entering into the License Agreement Amendment (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound hereby, Purchaser and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Certain Defined Terms**. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the respective meanings specified below:

“**Action**” shall mean any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

“**Affiliate**” shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“**Agreement**” or “**this Agreement**” shall have the meaning specified in the preamble to this Agreement.

“Allocation Schedule” shall have the meaning specified in Section 2.3(b).

“Ancillary Agreements” shall mean the Bill of Sale, the Assumption Agreement, the Assignment of Intellectual Property, the License Agreement Amendment and any certificate or other document delivered pursuant to this Agreement or the transactions contemplated hereby.

“Assets” shall have the meaning specified in Section 2.1(a).

“Assigned Contracts” shall have the meaning specified in Section 2.1(a).

“Assumption Agreement” shall mean the Assumption Agreement to be executed by Purchaser and the Company and each of the Company Subsidiaries on the Closing Date substantially in the form of Exhibit A.

“Assignment of Intellectual Property” shall mean the Assignment of Intellectual Property to be executed by Purchaser and the Company and each of the Company Subsidiaries on the Closing Date substantially in the form of Exhibit B.

“Assumed Liabilities” shall have the meaning specified in Section 2.2(a).

“Bill of Sale” shall mean the Bill of Sale and Assignment to be executed by the Company and each of the Company Subsidiaries on the Closing Date substantially in the form of Exhibit C.

“Borrowed Equipment” shall have the meaning specified in Section 5.10.

“Business” shall have the meaning specified in the recitals to this Agreement.

“Business Day” shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of San Francisco, California.

“Closing” shall have the meaning specified in Section 2.5.

“Closing Date” shall have the meaning specified in Section 2.5.

“Code” shall have the meaning specified in Section 3.12(x).

“Company” shall have the meaning specified in the preamble to this Agreement.

“Company Products Intellectual Property” shall mean all Intellectual Property embodied in any Company Products or used in the branding, advertising, promotion, marketing, distribution and/or sale of any Company Products.

“Company-Licensed Intellectual Property” shall mean all Intellectual Property that is licensed in from a third party (including without limitation under open source or free download licenses), as set forth in Section 3.12(l) of the Disclosure Schedule or Section 3.12(x) of the Disclosure Schedule.

“Company-Owned Intellectual Property” shall mean all Company Products Intellectual Property that is not Company-Licensed Intellectual Property.

“Company Products” shall mean the products specified in Section 3.12(a) of the Disclosure Schedule, including all forms and versions thereof (including without limitation Company Source Code related thereto and including all versions thereof on all platforms for which they have been developed).

“Company Registered Intellectual Property Rights” shall have the meaning specified in Section 3.12(b).

“Company Source Code” shall mean, collectively, any software source code, any material portion or aspect of software source code, or any proprietary information or algorithm contained in or relating to any software source code, of any Company Products Intellectual Property or any Company Product.

“Company Subsidiary” shall mean each of Aleri Inc., a Delaware corporation, and Aleri UK Limited, a UK company.

“Confidentiality Agreement” shall mean the Mutual Non-Disclosure Agreement, dated as of August 3, 2007, between the Company and Purchaser.

“Control” (including the terms **“controlled by”** and **“under common control with”**), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by Contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Contract” shall mean any written or oral contract, agreement, plan, arrangement, undertaking, commitment or understanding of any nature, including, without limitation, licenses, sublicenses, leases, subleases, commitments, sales and purchase orders, invoices, franchises, notes, bonds, mortgages and indentures.

“Copyrights” shall mean all copyrights, copyrights registrations, and applications therefore and all other rights corresponding thereto throughout the world.

“Disclosure Schedule” shall mean the Disclosure Schedule attached hereto, dated as of the date hereof, and forming a part of this Agreement.

“employee(s) of the Company” shall mean any employee of the Company or any Company Subsidiary.

“Encumbrance” shall mean any security interest, pledge, mortgage, lien (including, without limitation, tax liens), charge, encumbrance, impairment, adverse claim,

preferential arrangement, or restriction of any kind, including, without limitation, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“**End User Agreement**” shall mean customer agreements entered into in the ordinary course of business that provide users the non-exclusive non-transferable right to use a Company Product (in the case of Company Products that include software, such agreement providing only an object code license to such software) or non-exclusive right to receive services of the Company or any Company Subsidiary, but provides no rights to distribute Company Products or make any modifications thereto.

“**Environmental Laws**” shall mean any applicable Law or Governmental Order, in each case relating to (i) the protection, investigation or restoration of the environment, health and safety or natural resources, (ii) the handling, use, presence, disposal, release or threatened release of any Hazardous Material, or (iii) noise, odor, wetlands, pollution, contamination or injury or threat of injury to persons or property, as in effect on or prior to the Closing Date.

“**Excluded Assets**” shall have the meaning specified in Section 2.1(b).

“**Excluded Liabilities**” shall have the meaning specified in Section 2.2(b).

“**Governmental Authority**” shall mean any national, federal, state, municipal or local or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

“**Governmental Order**” shall mean any order, writ, judgment, injunction, decree, stipulation, determination, ruling or award entered by or with any Governmental Authority.

“**Hazardous Materials**” shall mean any hazardous substance, the use, transportation or disposition of which is regulated by Law or by any Governmental Authority, including, without limitation, any petroleum product or by-product, material containing asbestos, lead or polychlorinated biphenyls, radioactive material or radon.

“**Indebtedness**” shall mean, with respect to any Person, all liabilities, indebtedness or obligations of any kind or nature, contingent or otherwise, including (a) all indebtedness for borrowed money or for the deferred purchase price of property or services, (b) any other indebtedness that is evidenced by a note, bond, debenture, letter of credit or similar instrument or facility, (c) all obligations under financing and operating leases, and (d) all Indebtedness referred to in clauses (a) through (c) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including, without limitation, accounts and Contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“**Intellectual Property**” shall mean, collectively, Technology and Intellectual Property Rights.

“**Intellectual Property Rights**” shall mean any and all rights in, arising out of, or associated with the following: (i) Patents; (ii) Copyrights; (iii) Trade Secrets; (iv) Trademarks;

(v) Internet Properties; and (v) any similar, corresponding, or equivalent rights to any of the foregoing anywhere in the world.

“**Internet Properties**” shall mean all universal resource locators, World Wide Web addresses, sites, and domain names and all applications and registrations therefore.

“**IRC**” shall mean the Internal Revenue Code of 1986, as amended through the date hereof.

“**IRS**” shall mean the Internal Revenue Service of the United States.

“**Knowledge**” with respect to the Company shall mean the actual knowledge of the executive officers of the Company.

“**Law**” shall mean any national, federal, state, municipal or local or other statute, law, ordinance, regulation, rule, code, Governmental Order, or other requirement or rule of law.

“**Liabilities**” shall mean any and all debts, liabilities, obligations and Indebtedness, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, and whether or not required to be presented on a balance sheet prepared in accordance with U.S. GAAP, including, without limitation, those arising under any Law, Action or Governmental Order, those arising under any Contract and any off-balance sheet liabilities.

“**License Agreement Amendment**” shall mean the Amendment to License Agreement to be executed by the Company and Purchaser on the Closing Date substantially in the form of Exhibit D.

“**Material Adverse Effect**” shall mean any event, circumstance, change in, or effect on, the Business, the Assets or the Assumed Liabilities that, individually or in the aggregate with any other events, circumstances, changes in, or effects on, the Business, the Assets or the Assumed Liabilities (a) is, or could reasonably be expected to be, materially adverse to the Business, the Assets or the Assumed Liabilities (including, without limitation, contingent Liabilities), or (b) could materially adversely affect the ability of Purchaser to operate or conduct the Business, or operate, conduct, utilize or exploit the Assets as currently conducted or currently contemplated to be conducted; *provided, however*, that none of the following constitute, or will be considered in determining whether there has occurred, or will occur, a Material Adverse Effect: (i) changes that are the result of factors generally affecting the industries or markets in which the Company or any of its Subsidiaries operates which do not disproportionately affect the Company and its Subsidiaries taken as a whole; (ii) changes in laws, rules or regulations or U.S. GAAP or the interpretation thereof; (iii) any action taken at the written request of Purchaser; (iv) any failure of the Company to meet any projections or forecast (it being understood that the causes underlying such failure may be considered in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); (v) changes that are the result of general economic or industry factors affecting the national, regional or world economy or acts of war or terrorism, which do not disproportionately affect the Company and its Subsidiaries, taken as a whole; and (vi) any condition of the Business described in this Agreement and the Disclosure Schedule.

“Material Contracts” shall have the meaning specified in Section 3.11(a).

“Open Source Materials” shall have the meaning specified in Section 3.12(x).

“Patents” shall mean all United States and foreign patents and utility models and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations, and continuations-in-part thereof, and equivalent or similar rights anywhere in the world in inventions and discoveries, including invention disclosures.

“Person” shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

“Plans” shall mean (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) and all bonus, retention, stock option, profits or membership interest or option, stock purchase, restricted stock, incentive, deferred compensation, retiree medical or life insurance, supplemental retirement, severance or other benefit plans, programs, policies, practices or arrangements, and all employment, consulting, termination, retention, severance or other Contracts, whether legally enforceable or not, to which the Company or any of its Affiliates is a party, with respect to which the Company or any of its Affiliates has any liability or obligation or which are maintained, contributed to or sponsored by the Company or any of its Affiliates for the benefit of any current or former employee, consultant, officer, member or director of the Company or any of its Affiliates, including benefit plans, programs, policies, practices or arrangements for the benefit of current or former employees, consultants, officers, members or directors of the Company or any of its Affiliates who perform services outside the United States, (ii) each employee benefit plan for which the Company or any of its Affiliates could incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated, (iii) any plan in respect of which the Company or any of its Affiliates could incur liability under Section 4212(c) of ERISA and (iv) any Contracts between the Company or any Company Subsidiary and any employee of or consultant to the Company or any Company Subsidiary including, without limitation, any Contracts relating to a sale of the Company or any Company Subsidiary, the Assets or the Business.

“PTO” shall have the meaning specified in Section 3.12(b).

“Purchase Price” shall have the meaning specified in Section 2.3(a).

“Purchase Price Bank Account” shall mean a bank account in the United States to be designated by the Company in a written notice to Purchaser at least three (3) Business Days before the Closing.

“Purchaser” shall have the meaning specified in the preamble to this Agreement.

“Real Property Lease Agreement” shall have the meaning specified in Section 2.1(a)(viii).

“Requisite Stockholder Approval” shall have the meaning specified in Section 3.1(a).

“Registered Intellectual Property Rights” shall mean all United States, international and foreign: (i) Patents, including applications therefor; (ii) registered Trademarks, applications to register Trademarks, including intent-to-use applications, or other registrations or applications related to Trademarks; (iii) Copyright registrations and applications to register Copyrights; and (iv) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any private, state, government or other public legal authority at any time.

“Returns” shall mean all reports, estimates, declarations of estimated Tax, claims for refund, information statements and returns relating to, or required to be filed in connection with, any Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Subsidiary” shall mean, with respect to any Person, any other corporation, limited liability company, general or limited partnership, unincorporated association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock or equity interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof.

“Tangible Assets” shall have the meaning specified in Section 2.1(a)(vii).

“Tax” means (i) any and all taxes (including estimated taxes), assessments, fees, levies, duties, tariffs, imposts and other charges of any kind (together with any and all interest, penalties, loss, damage, liability, expense, additions to tax and additional amounts or costs incurred or imposed with respect thereto) imposed by any government or taxing authority (a **“Taxing Authority”**), whether payable directly or by withholding and whether or not requiring the filing of a Return; (ii) taxes or other charges on or with respect to income, franchises, concessions, windfall or other profits, gross receipts, property, sales, use, capital gains, capital stock or shares, payroll, employment, occupation, severance, social security, government pension, health, capital, workers’ compensation, unemployment compensation, or net worth; (iii) taxes or other charges in the nature of excise, goods and services, withholding, ad valorem, stamp, transfer, value added or gains taxes; (iv) license, registration and documentation fees; (v) customs duties, tariffs and similar charges; and (vi) any liability for the payment of the foregoing as a result of being a member of a combined, consolidated, unitary or affiliated group, a predecessor or successor corporation, or a party to a contractual obligation to indemnify any other Person.

“**Technology**” means any and all of the following tangible or intangible items or things, in any format: (i) computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), design tools, and user interfaces, including documentation, annotations, or comments, and including all related algorithms, data and data structures; (ii) information, invention disclosures, know-how, show-how, techniques, algorithms, routines, works of authorship, processes, devices, prototypes, test methodologies, hardware development tools, materials that document design or design processes (including failed designs), or that document research or testing (both design, processes and results); (iii) databases, data collections and libraries; (iv) any content (including textual, visual, or graphics content); and (v) any media on which any of the foregoing is recorded, and any other tangible embodiments or copies of any of the foregoing.

“**Trademarks**” shall mean all of the following: trade names, logos, common law trademarks, and service marks, trademark, and service mark registrations and applications therefore (including intent to use applications) and all goodwill associated therewith throughout the world.

“**Trade Secrets**” means all worldwide trade secret right and other rights in know-how, show-how, technical data, and any other proprietary and confidential information.

“**U.S. GAAP**” shall mean United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Assets to Be Sold.

(a) On the terms and subject to the conditions of this Agreement, the Company shall and shall cause the Company Subsidiaries and any other Subsidiaries of the Company to, on the Closing Date, sell, assign, transfer, convey and deliver to Purchaser or cause to be sold, assigned, transferred, conveyed and delivered to Purchaser, and Purchaser shall purchase from the Company, the Company Subsidiaries and any other Subsidiary of the Company, on the Closing Date, all of the Company, the Company Subsidiaries and any other Subsidiary of the Company’s right, title and interest in and to the following assets (the assets to be purchased by Purchaser being referred to as the “**Assets**”):

(i) all Company-Owned Intellectual Property and, to the extent there is no third party restriction on the right to transfer the interests therein, all other Company Products Intellectual Property, and all other Intellectual Property Rights owned by the Company or a Company Subsidiary;

(ii) all rights of the Company and the Company Subsidiaries under all Contracts set forth on Section 2.1(a)(ii) of the Disclosure Schedule and any other Contracts identified after the date hereof pursuant to Section 5.4(e) (to the extent Purchaser, in its sole discretion, consents to the assignment thereof) (collectively, the “**Assigned Contracts**”);