SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO

(Rule 14d-100)

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

THERMA-WAVE, INC.

(Name of subject company (Issuer))

KLA-TENCOR CORPORATION
FENWAY ACQUISITION CORPORATION

(Names of Filing Persons (Offerors))

Common Stock, $0.01 par value per share **Series B Convertible Preferred Stock, $0.01 par value per share** **(Title of classes of securities)**	**88343A108** **NA** **(CUSIP number of classes of securities)**

Jeffrey L. Hall
Chief Financial Officer
KLA-Tencor Corporation
One Technology Drive
San Jose, California 95035
Telephone: (408) 875-3000

Copies to:
William M. Kelly, Esq.
Davis Polk & Wardwell
1600 El Camino Real
Menlo Park, California 94025
Telephone: (650) 752-2000

(Name, address, and telephone number of person authorized to receive notices and communications on behalf of Filing Persons)

CALCULATION OF FILING FEE

Transaction Valuation(1)	**Amount of Filing Fee(2)**
$73,954,744	**$7,914**

(1) Estimated for purposes of calculating the filing fee only. This amount is based upon an estimate of the maximum number of shares of Common Stock and Series B Convertible Preferred Stock of Therma-Wave to be purchased pursuant to the tender offer at the tender offer price of $1.65 per share of Common Stock and $1.65 per share of Common Stock into which each share of Series B Convertible Preferred Stock is convertible.

(2) The amount of the filing fee calculated in accordance with the Securities Exchange Act of 1934, as amended, equals $107.00 for each $1,000,000 of value.

☐ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount Previously Paid:	N/A	Filing Party:	N/A
Form of Registration No.:	N/A	Date Filed:	N/A

☐ Check the box if the filing relates solely to preliminary communications made before the commencement of the tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☑ third party tender offer subject to Rule 14d-1
- ☐ issuer tender offer subject to Rule 13e-4
- ☐ going private transaction subject to Rule 13e-3
- ☐ amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer: ☐

Items 1 through 9, and Item 11.

This Tender Offer Statement on Schedule TO (this "Schedule TO") is filed by KLA-Tencor Corporation, a Delaware corporation ("Parent"), and Fenway Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent (the "Purchaser"). This Schedule TO relates to the offer by the Purchaser to purchase all of the outstanding shares of common stock, par value $0.01 per share ("Common Shares"), of Therma-Wave, Inc., a Delaware corporation (the "Company"), at $1.65 per Common Share, net to the seller in cash without interest, less any required withholding taxes, and all the outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares"), of the Company at $1.65 per Common Share into which each Preferred Share is convertible at the time of the consummation of the Offer, net to the seller in cash without interest, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 18, 2006 (the "Offer to Purchase") and in the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii) (which, together with any amendments or supplements thereto, collectively constitute the "Offer").

The information set forth in the Offer to Purchase and the related Letter of Transmittal is incorporated herein by reference with respect to Items 1 through 9 and 11 of this Schedule TO.

Item 10. ***Financial Statements.***

Not applicable.

Item 12. ***Exhibits.***

(a)(1)(i)	Offer to Purchase, dated January 18, 2007.*
(a)(1)(ii)	Form of Letter of Transmittal.*
(a)(1)(iii)	Form of Notice of Guaranteed Delivery.*
(a)(1)(iv)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(v)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust and Other Nominees.*
(a)(1)(vi)	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
(b)	None.
(d)(1)	Agreement and Plan of Merger, dated January 7, 2007, among Parent, the Purchaser and the Company.
(d)(2)	Tender and Support Agreement, dated January 7, 2007, among Parent, the Purchaser, the Company and each shareholder party thereto.
(d)(3)	Amended and Restated Mutual Nondisclosure Agreement, dated May 15, 2006, by and between Therma-Wave, Inc. and KLA-Tencor Corporation.
(g)	None.
(h)	None.

* Included in mailing to shareholders.

Item 13. ***Information Required by Schedule 13 E-3.***

Not applicable.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: January 18, 2007

KLA-TENCOR CORPORATION

By: /s/ Jeffrey L. Hall
Jeffrey L. Hall
Chief Financial Officer

EXHIBIT INDEX

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(g)	None.
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* Included in mailing to shareholders.

Exhibit (a)(1)(i)

OFFER TO PURCHASE FOR CASH

All Outstanding Shares of Common Stock
and
All Outstanding Shares of Series B Convertible Preferred Stock
of
THERMA-WAVE, INC.
at
$1.65 Net Per Share of Common Stock
and
$1.65 Net Per Share of Common Stock into which
each Share of Series B Convertible Preferred Stock is Convertible
at the Time of the Consummation of the Offer
by
FENWAY ACQUISITION CORPORATION
a wholly-owned subsidiary of
KLA-TENCOR CORPORATION

THE OFFER AND WITHDRAWAL RIGHTS EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, FEBRUARY 14, 2007, UNLESS EXTENDED.

THIS OFFER IS BEING MADE PURSUANT TO AN AGREEMENT AND PLAN OF MERGER (THE "MERGER AGREEMENT") DATED JANUARY 7, 2007 AMONG KLA-TENCOR CORPORATION ("PARENT"), FENWAY ACQUISITION CORPORATION (THE "PURCHASER") AND THERMA-WAVE, INC. (THE "COMPANY"). THE BOARD OF DIRECTORS OF THE COMPANY BY UNANIMOUS RESOLUTION HAS, AMONG OTHER THINGS, (I) DECLARED THAT THE MERGER AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE OFFER AND THE MERGER (EACH AS DEFINED HEREIN), ARE FAIR TO AND IN THE BEST INTERESTS OF THE STOCKHOLDERS OF THE COMPANY, (II) APPROVED AND ADOPTED THE MERGER AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY AND (III) RECOMMENDED THAT THE STOCKHOLDERS OF THE COMPANY TENDER THEIR SHARES TO PURCHASER PURSUANT TO THE OFFER AND APPROVE AND ADOPT THE MERGER AGREEMENT AND THE MERGER.

THE OFFER IS CONDITIONED UPON, AMONG OTHER THINGS, (1) THERE BEING VALIDLY TENDERED IN ACCORDANCE WITH THE TERMS OF THE OFFER, PRIOR TO THE EXPIRATION OF THE OFFER, AND NOT WITHDRAWN, SHARES OF COMMON STOCK, PAR VALUE $0.01 PER SHARE ("COMMON SHARES"), AND SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK, PAR VALUE $0.01 PER SHARE ("PREFERRED SHARES" AND, TOGETHER WITH THE COMMON SHARES, THE "SHARES"), OF THE COMPANY, THAT, TOGETHER WITH ANY SHARES THEN OWNED BY PARENT AND ITS SUBSIDIARIES (INCLUDING THE PURCHASER), REPRESENT A MAJORITY OF THE TOTAL NUMBER OF SHARES THEN OUTSTANDING (ASSUMING FULL CONVERSION OF THE PREFERRED SHARES INTO COMMON SHARES) AND (2) ANY WAITING PERIODS OR APPROVALS UNDER APPLICABLE ANTITRUST LAWS HAVING EXPIRED, BEEN TERMINATED OR BEEN OBTAINED. THE OFFER IS ALSO SUBJECT TO OTHER CONDITIONS. SEE "INTRODUCTION" AND "THE OFFER — SECTION 15."

IMPORTANT

Any stockholder of the Company desiring to tender Shares in the Offer should either:

(i) complete and sign the Letter of Transmittal (or a manually signed facsimile thereof) in accordance with the instructions in the Letter of Transmittal, and mail or deliver the Letter of Transmittal (or such facsimile thereof) together with the certificates representing tendered Shares and all other required documents to Computershare Shareholder Services, Inc., the Depositary for the Offer, or tender such Shares pursuant to the procedure for book-entry transfer set forth in "The Offer — Section 3 — Book-Entry Delivery"; or

(ii) request your broker, dealer, bank, trust company or other nominee to effect the transaction for you.

Stockholders whose Shares are registered in the name of a broker, dealer, bank, trust company or other nominee must contact such person if they desire to tender their Shares.

Any stockholder who desires to tender Shares and whose certificates representing such Shares are not immediately available, or who cannot comply with the procedures for book-entry transfer on a timely basis, may tender such Shares pursuant to the guaranteed delivery procedure set forth in "The Offer — Section 3 — Guaranteed Delivery."

Questions and requests for assistance may be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offer to Purchase. Additional copies of this Offer to Purchase, the Letter of Transmittal, the Notice of Guaranteed Delivery and other related materials may be obtained from the Information Agent or from your broker, dealer, bank, trust company or other nominee.

THIS OFFER TO PURCHASE AND THE RELATED LETTER OF TRANSMITTAL CONTAIN IMPORTANT INFORMATION, AND YOU SHOULD CAREFULLY READ BOTH IN THEIR ENTIRETY BEFORE MAKING A DECISION WITH RESPECT TO THE OFFER.

January 18, 2007

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SUMMARY TERM SHEET

Securities Sought:	All issued and outstanding shares of common stock, par value $0.01 per share, and all issued and outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share, of Therma-Wave, Inc.
Price Offered Per Share:	$1.65 per share of Therma-Wave, Inc.'s common stock, net to you in cash without interest, less any required withholding taxes, and $1.65 per share of Therma-Wave, Inc.'s common stock into which each share of Therma-Wave, Inc.'s Series B Convertible Preferred Stock is convertible at the time of consummation of the Offer, net to you in cash without interest, less any required withholding taxes.
Scheduled Expiration of Offer:	12:00 Midnight, New York City time on Wednesday, February 14, 2007, unless extended.
Purchaser:	Fenway Acquisition Corporation, a wholly-owned subsidiary of KLA-Tencor Corporation.

The following are some of the questions that you, as a Therma-Wave, Inc. stockholder, may have and the answers to those questions. **We urge you to read carefully the remainder of this Offer to Purchase and the Letter of Transmittal because the information in this summary term sheet is not complete. Additional important information is contained in the remainder of this Offer to Purchase and the Letter of Transmittal.**

Who is offering to buy my securities?

Our name is Fenway Acquisition Corporation. We are a Delaware corporation formed for the purpose of making this tender offer for all of the common stock and Series B Convertible Preferred Stock of Therma-Wave, Inc. We are a wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation.

Unless the context indicates otherwise, we will use the terms "us," "we" and "our" in this Offer to Purchase to refer to Fenway Acquisition Corporation and, where appropriate, "KLA-Tencor" or "Parent" to refer to KLA-Tencor Corporation. We will use the term "Therma-Wave" or "the Company" to refer to Therma-Wave, Inc. See "Introduction" and "The Offer — Section 9."

What securities are you offering to purchase?

We are offering to purchase all of the outstanding common stock, par value $0.01 per share, referred to herein as "common shares", and Series B Convertible Preferred Stock, par value $0.01 per share, referred to herein as "preferred shares", of the Company. The preferred shares vote, on an as-converted basis, together with the common shares on all matters that come before a vote of the Company's stockholders. Unless the context requires otherwise, we refer to the common shares and preferred shares collectively as the "shares". See "Introduction."

How much are you offering to pay for my shares and what is the form of payment?

We are offering to pay holders of the common shares $1.65 per common share, net to you in cash without interest, less any required withholding taxes.

We are offering to pay holders of the preferred shares $1.65 per common share into which each such preferred share is convertible at the time of the consummation of the offer, net to you in cash without interest, less any required withholding taxes.

See "Introduction" and "The Offer — Section 1."

Will I have to pay any fees or commissions?

If you are the record owner of your shares and you tender your shares to us in the offer, you will not have to pay brokerage fees or similar expenses. If you own your shares through a broker, dealer, bank, trust company or other nominee, and your nominee tenders your shares on your behalf, your nominee may charge you a fee for doing so. You should consult your broker, dealer, bank, trust company or other nominee to determine whether any charges will apply. See "Introduction."

Do you have the financial resources to pay for the shares?

Yes. We estimate that we will need approximately $74 million to purchase all of the outstanding shares pursuant to the offer and to pay all related fees and expenses. We expect to have sufficient cash on hand at the expiration of the offer to pay the offer price for all shares in the offer. The offer is not conditioned upon any financing arrangements. See "The Offer — Section 10."

Is your financial condition relevant to my decision to tender in the offer?

We do not think our financial condition is relevant to your decision whether to tender in the offer because:

- the offer is being made for all of the outstanding shares solely for cash;
- the offer is not subject to any financing condition;
- if we consummate the offer, we expect to acquire all remaining shares for the same cash price in the subsequent merger; and
- pursuant to the merger agreement, KLA-Tencor, our parent, has represented that it will make available to us the funds necessary to consummate the offer and the merger.

What does the Board of Directors of Therma-Wave think of the offer?

The Board of Directors of Therma-Wave has, among other things, unanimously:

- determined that the merger agreement and the transactions contemplated thereby, including the offer and the subsequent merger, are fair to and in the best interests of the stockholders of the Company;
- approved and adopted the merger agreement and the transactions contemplated thereby, including the offer and the subsequent merger; and
- recommended that the Company stockholders tender their shares pursuant to the offer and approve and adopt the merger agreement.

See "Introduction."

Have any stockholders previously agreed to tender their shares?

Yes. All of the directors and executive officers of Therma-Wave have agreed to tender their common shares into this offer and all of the holders of the preferred shares have agreed to tender their common shares and preferred shares into this offer. Collectively, these shareholders own approximately 25% of Therma-Wave's outstanding shares on a fully-converted basis. See "The Offer — Section 13 — Tender and Support Agreement."

How long do I have to decide whether to tender in the offer?

You will have at least until 12:00 midnight, New York City time, on Wednesday, February 14, 2007 to tender your shares in the offer. If you cannot deliver everything that is required in order to make a valid tender by that time, you may be able to use a guaranteed delivery procedure, which is described later in this Offer to Purchase. See "The Offer — Section 3."

If a broker, dealer, bank, trust company or other nominee holds your shares it is likely that such nominee has an earlier deadline for you to act to instruct it to accept the tender offer on your behalf. We urge you to contact the broker, dealer, bank, trust company or other nominee to find out its applicable deadline.

Can the offer be extended and under what circumstances?

Yes. We have agreed in the merger agreement that we will extend the offer beyond Wednesday, February 14, 2007 in the following circumstances:

- from time to time for successive periods of no more than 10 business days each (or such longer period as consented to by the Company, which consent shall not be unreasonably withheld) if, at the scheduled or extended expiration date of the offer, any of the conditions to the offer shall not have been satisfied or waived, until such conditions are satisfied or waived; and

- for any period required by any rule, regulation, interpretation or position of the Securities and Exchange Commission applicable to the offer or any period required by applicable law.

In addition, we may elect to provide one or more "subsequent offering periods" for the offer. A subsequent offering period, if included, will be an additional period of time beginning after we have purchased shares tendered during the offer, during which any remaining stockholders may tender, but not withdraw, their shares and receive the offer consideration. We do not currently intend to include a subsequent offering period, although we reserve the right to do so. See "The Offer — Section 1."

How will I be notified if the offer is extended?

If we decide to extend the offer, we will inform Computershare Shareholder Services, Inc., the depositary for the offer, of that fact and will make a public announcement of the extension, no later than 9:00 A.M., New York City time, on the next business day after the date the offer was scheduled to expire. See "The Offer — Section 1."

What are the most significant conditions to the offer?

The offer is conditioned upon, among other things, (i) there being validly tendered in accordance with the terms of the offer, prior to the expiration of the offer, and not withdrawn, common shares and preferred shares of Therma-Wave that, together with any common shares and preferred shares then owned by Parent and its subsidiaries (including Fenway Acquisition Corporation), represent a majority of the total number of shares then outstanding (assuming full conversion of all preferred shares into common shares) and (ii) any waiting periods or approvals under applicable antitrust laws having expired, been terminated or been obtained. The offer is also subject to other conditions. See "The Offer — Section 15."

How do I tender my shares?

To tender shares, you must deliver the certificates representing your shares, together with a completed Letter of Transmittal and any other required documents, to the depositary not later than the time the offer expires. If your shares are held in street name by your broker, dealer, bank, trust company or other nominee, such nominee can tender your shares through The Depository Trust Company. If you cannot deliver everything required to make a valid tender to the depositary before the expiration of the offer, you may have a limited amount of additional time by having a financial institution (including most banks, savings and loan associations and brokerage houses) that is a member of a recognized Medallion Program approved by The Securities Transfer Association Inc., including the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchange Medallion Program (SEMP) and the New York Stock Exchange, Inc. Medallion Signature Program (MSP), guarantee, pursuant to a Notice of Guaranteed Delivery, that the missing items will be received by the depositary within three Nasdaq Global Market trading days. However, the depositary must receive the missing items within that three trading day period. See "The Offer — Section 3."

Until what time can I withdraw tendered shares?

You can withdraw tendered shares at any time until the offer has expired. You may not, however, withdraw shares tendered during any subsequent offering period, if included. See "The Offer — Section 4."

How do I withdraw previously tendered shares?

To withdraw shares, you must deliver a written notice of withdrawal, or a facsimile of one, with the required information to the depositary while you have the right to withdraw the shares. See "The Offer — Section 4."

When and how will I be paid for my tendered shares?

Subject to the terms and conditions of the offer, we will pay for all validly tendered and not withdrawn shares promptly after the later of the date of expiration of the offer and the satisfaction or waiver of the conditions to the offer that are dependent upon receipt of governmental approvals set forth in "The Offer — Section 15." See "The Offer — Section 2."

We will pay for your validly tendered and not withdrawn shares by depositing the purchase price with the depositary, which will act as your agent for the purpose of receiving payments from us and transmitting such payments to you. In all cases, payment for tendered shares will be made only after timely receipt by the depositary of certificates for such shares (or of a confirmation of a book-entry transfer of such shares as described in "The Offer — Section 3 — Book-Entry Delivery"), a

properly completed and duly executed Letter of Transmittal (or facsimile thereof) and any other required documents for such shares. See "The Offer — Section 2."

Will the offer be followed by a merger if all the shares are not tendered in the offer?

Yes. If we accept for payment and pay for a majority of the outstanding shares (assuming full conversion of the preferred shares into common shares), we expect to be merged with and into Therma-Wave in accordance with the terms of the merger agreement. If that merger takes place, all remaining holders of common shares (other than us, KLA-Tencor and its subsidiaries and stockholders properly exercising their dissenters' rights) will receive the price per share paid in the offer. See "The Offer — Section 12 — Purpose of the Offer; Plans for the Company."

If a majority of the shares are tendered and accepted for payment, will Therma-Wave continue as a public company?

No. Following the purchase of shares in the offer we expect to consummate the merger, and following the merger, Therma-Wave no longer will be publicly owned. However, if for some reason the merger does not take place, the number of stockholders of Therma-Wave and the number of shares of Therma-Wave which are still in the hands of the public may be so small that the shares may no longer be eligible to be traded on the Nasdaq Global Market or on any securities exchange and there may no longer be an active public trading market (or, possibly, there may not be any public trading market) for the shares. Also, Therma-Wave may cease making filings with the Securities and Exchange Commission or otherwise being required to comply with the Securities and Exchange Commission rules relating to publicly held companies. See the "Introduction" and "The Offer — Section 7."

If I decide not to tender, how will the offer affect my shares?

If the merger described above takes place, holders of common shares not tendering in the offer will receive the same amount of cash per share that they would have received had they tendered their common shares in the offer, without interest. Therefore, if such merger takes place, the only difference between tendering and not tendering common shares in the offer is that tendering stockholders will be paid earlier. If, however, the merger does not take place and the offer is consummated, the number of stockholders and the number of common shares that are still in the hands of the public may be so small that there will no longer be an active or liquid public trading market (or, possibly, any public trading market) for common shares held by stockholders other than Fenway Acquisition Corporation, which may affect prices at which shares trade. Also, as described above, Therma-Wave may cease making filings with the Securities and Exchange Commission or being required to comply with the Securities and Exchange Commission rules relating to publicly held companies. See "The Offer — Section 7."

What is the market value of my shares as of a recent date?

On January 5, 2007, the last full trading day before the announcement of our intention to commence the offer, the last reported sales price of Therma-Wave common stock reported on the Nasdaq Global Market was $1.25 per share. We advise you to obtain a recent quotation for your shares prior to deciding whether or not to tender.

The preferred shares are not listed on any exchange and there is no established trading market for the preferred shares.

What are the material U.S. Federal income tax consequences of participating in the offer?

In general, your sale of shares pursuant to the offer will be a taxable transaction for U.S. Federal income tax purposes and may also be a taxable transaction under applicable state, local or foreign income or other tax laws. You should consult your tax advisor about the tax consequences to you of participating in the offer in light of your particular circumstances. See "The Offer — Section 5."

Who can I talk to if I have questions about the offer?

You can call D.F. King & Co., Inc., the information agent for the offer, at (212) 269-5550 (collect) for banks and brokers or otherwise at (800) 431-9633 (toll-free). See the back cover of this Offer to Purchase.

To the stockholders of Therma-Wave, Inc.:

INTRODUCTION

We, Fenway Acquisition Corporation (the "Purchaser"), a Delaware corporation and wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation ("KLA-Tencor" or "Parent"), are offering to purchase all of the outstanding shares of common stock, par value $0.01 per share ("Common Shares"), and all of the outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares" and, together with the Common Shares, "Shares"), of Therma-Wave, Inc., a Delaware corporation ("Therma-Wave" or the "Company"), at a purchase price of $1.65 per Common Share, and $1.65 per Common Share into which each Preferred Share is convertible at the time of the consummation of the offer, net to the seller in cash without interest thereon, less any withholding taxes (the "Offer Price"), upon the terms and subject to the conditions set forth in this Offer to Purchase and the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the "Offer").

Stockholders of record who have Shares registered in their own names and tender directly to Computershare Shareholder Services, Inc., the depositary for the Offer (the "Depositary"), will not have to pay brokerage fees or commissions. Stockholders with Shares held in street name by a broker, dealer, bank, trust company or other nominee should consult with their nominee to determine if they charge any transaction fees. Except as set forth in Instruction 6 of the Letter of Transmittal, stockholders will not have to pay stock transfer taxes on the sale of Shares pursuant to the Offer. However, any tendering stockholder or other payee who fails to complete and sign the Substitute Form W-9 that is included in the Letter of Transmittal or otherwise establish an exemption may be subject to backup withholding under the U.S. federal income tax laws. See "The Offer — Section 3 — Backup Withholding." We will pay all charges and expenses of the Depositary and D.F. King & Co., Inc. (the "Information Agent") incurred in connection with the Offer. See "The Offer — Section 17."

We are making the Offer pursuant to an Agreement and Plan of Merger (as such agreement may be amended from time to time, the "Merger Agreement") dated as of January 7, 2007 among Parent, the Purchaser and the Company. The Merger Agreement provides, among other things, that as soon as practicable after the consummation of the Offer, we will merge with and into the Company (the "Merger"), with the Company continuing as the surviving corporation and a wholly-owned subsidiary of Parent. In the Merger, each outstanding Common Share (other than Dissenting Shares (as defined below) and any Common Shares held by the Company, Parent and any of their subsidiaries (including us) will be converted into the right to receive the price paid in the Offer, without interest. The Merger Agreement is more fully described in Section 13 entitled "The Transaction Documents."

The Board of Directors of the Company (the "Company Board") has unanimously (i) determined that the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, are fair to and in the best interests of the stockholders of the Company, (ii) approved and adopted the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger and (iii) recommended that the Company stockholders tender their shares pursuant to the Offer and approve and adopt the Merger Agreement.

Needham & Company, LLC ("Needham & Company"), the Company's financial advisor, has delivered to the Company Board its written opinion dated January 5, 2007 to the effect that, as of that date and based upon the assumptions and other matters described in the opinion, the consideration of $1.65 in cash per share to be received by the holders of Common Shares pursuant to the Merger Agreement was fair to such holders from a financial point of view. The full text of the written opinion of Needham & Company containing the assumptions made, procedures followed, matters considered and limitations on and scope of the review undertaken is included with the Company's Solicitation/Recommendation Statement on Schedule 14D-9 (the "Schedule 14D-9"), which has been filed by the Company with the Securities and Exchange Commission (the "SEC") in connection with the Offer and is being mailed to stockholders with this Offer to Purchase. The Needham & Company opinion is addressed to the Company Board and relates only to the fairness, from a financial point of view, of the consideration to be received by holders of Common Shares pursuant to the Merger Agreement as of the date of the opinion. It does not address any other aspect of the Offer or the Merger or any related transaction, including the offer to purchase Preferred Shares, and does not constitute a recommendation to any stockholder of the Company as to whether that stockholder should tender Shares pursuant to the Offer or how that stockholder should vote or act on any matter relating to the Offer or the Merger. Stockholders are urged to read the full text of the opinion carefully.

The Offer is conditioned upon, among other things, (1) there being validly tendered in accordance with the terms of the Offer, prior to the expiration of the Offer, and not withdrawn, Shares that, together with any Shares then owned by Parent and its subsidiaries (including the Purchaser), represent a majority of the total number of Shares then outstanding (assuming full conversion of the Preferred Shares into Common Shares) (the "Minimum Condition") and (2) any waiting periods or approvals under applicable antitrust laws having expired, been terminated or been obtained. The Offer is also subject to other conditions. See "Introduction" and "The Offer — Section 15."

The Company has represented in the Merger Agreement that as of January 5, 2007, there were issued and outstanding 37,230,516 Common Shares and 10,400 Preferred Shares (or approximately 6,709,677 Common Shares after full conversion of the Preferred Shares). None of Parent or the Purchaser currently beneficially owns any Shares except insofar as the Tender and Support Agreements described in the "Tender and Support Agreement" subsection of Section 13 of this Offer to Purchase may be deemed to constitute beneficial ownership. Each of Parent and the Purchaser disclaims such beneficial ownership. Based on the foregoing, and assuming that (i) no Shares were issued by the Company after January 5, 2007 (including pursuant to stock option exercises), (ii) full conversion of the Preferred Shares into Common Shares at the time of consummation of the Offer and (iii) no extension of the Expiration Date, the Minimum Condition will be satisfied if the Purchaser acquired at least 21,993,259 Shares in the Offer. All of the Company's directors and executive officers, who collectively own 943,817 outstanding Common Shares (excluding the shares issuable upon exercise of outstanding options), and all of the holders of the Preferred Shares, who collectively own 3,606,900 Common Shares and 10,400 Preferred Shares (or approximately 6,709,677 Common Shares after full conversion of the Preferred Shares), collectively representing approximately 25% of the Company's issued and outstanding Shares as of January 7, 2007 (assuming full conversion of Preferred Shares), have already agreed to tender their Shares into the Offer pursuant to the Tender and Support Agreement. See Section 1 entitled "Terms of the Offer."

In addition, the holders of the Preferred Shares have agreed to sell their warrants to purchase an aggregate of 1,560,000 Common Shares, at $1.55 per share, to Parent or the Company, at the election of Parent, for a per share price equal to the difference between the Offer Price and the exercise price. These warrants have not been reflected above in the percentage of Shares subject to the Tender and Support Agreement to be tendered in the Offer.

Stockholders tendering their Shares according to the guaranteed delivery procedures set forth under "The Offer — Section 3 — Guaranteed Delivery" may do so using the Notice of Guaranteed Delivery circulated herewith. As used herein, the term "Notice of Guaranteed Delivery" refers to such document.

If we accept for payment and pay for any Shares pursuant to the Offer, the Merger Agreement provides that Parent will be entitled to designate representatives to serve on the Company Board in proportion to our ownership of Shares following such purchase. We currently intend, as soon as practicable after consummation of the Offer, to exercise this right and to designate Vineet Dharmadhikari, David Fisher, Jeffrey L. Hall, John H. Kispert, Joe Laia, Shubham Maheshwari, Jorge Titinger, Brian Trafas, Bin-ming Tsai, Laurence Wagner and Richard P. Wallace, each of whom is an officer of KLA-Tencor, to serve as directors of the Company. The foregoing information and certain other information contained in this Offer to Purchase and the Schedule 14D-9 are being provided in accordance with the requirements of Section 14(f) of the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14f-1 thereunder. We expect that such representation would permit us to exert substantial influence over the Company's conduct of its business and operations. The Purchaser currently intends, as soon as practicable after consummation of the Offer, to consummate the Merger pursuant to the Merger Agreement. Following the Merger, the directors of the Purchaser will be the directors of the Company.

Consummation of the Merger is subject to a number of conditions, including the purchase of Shares by the Purchaser pursuant to the Offer, adoption of the Merger Agreement by the stockholders of the Company, if such adoption is required under applicable law, and there being no applicable law prohibiting the consummation of the Merger. Under the Delaware General Corporation Law (the "DGCL"), if we acquire, pursuant to the Offer or otherwise, at least 90% of the Common Shares and 90% of the Preferred Shares, we believe we would be able to effect the Merger without a vote of the Company's stockholders. If we do not acquire at least 90% of the Common Shares and 90% of the Preferred Shares, we will seek approval of the Merger Agreement and the Merger by the Company's stockholders. Approval of the Merger Agreement and the Merger requires the affirmative vote of holders of a majority of the outstanding shares of the Company's capital stock entitled to vote on such matters. Thus, if the Minimum Condition and the other conditions to the Offer are satisfied and the Offer is completed, we will own a sufficient number of Shares to ensure that the Merger Agreement will be approved by the Company's stockholders.

The Company has irrevocably granted the Purchaser an option (the "Top-Up Option") to purchase that number of Common Shares (the "Top-Up Option Shares") equal to the lowest number of Common Shares that, when added to the number of Shares directly or indirectly owned by Parent or the Purchaser at the time of such exercise, shall constitute one share more than 90% of the Common Shares then outstanding (taking into account the issuance of the Top-Up Option Shares) at a price per share equal to the Offer Price. Notwithstanding the foregoing, the Top-Up Option would not be exercisable if the aggregate number of Common Shares issuable upon exercise of the Top-Up Option would exceed the number of then authorized and unissued Common Shares (giving effect to Shares reserved for issuance under the Company's stock option and equity award plans as if such shares were outstanding).

The Company has never paid a quarterly cash dividend on the Common Shares. If we acquire control of the Company, we currently intend that no dividends will be declared on the Shares prior to the acquisition of the entire equity interest in the Company.

Pursuant to the terms of the Company's Certificate of Designation of Rights, Preferences and Privileges of the Series B Convertible Preferred Stock, the Preferred Shares accrue dividends of 6% per annum of the "Liquidation Value" (as defined therein) of the Preferred Shares, which Liquidation Value is currently $1,000 per share. Upon conversion of the Preferred Shares, any accrued and unpaid dividends are converted into Common Shares at the then-applicable conversion price, currently $1.55 per share. At the time of the consummation of the Offer, the Preferred Shares will be treated as if converted at the time of consummation of the Offer, and we shall pay the Offer Price for each Common Share into which such Preferred Shares are convertible.

This Offer to Purchase and the related Letter of Transmittal contain important information, and you should carefully read both in their entirety before you make a decision with respect to the Offer.

THE OFFER

1. Terms of the Offer.

Upon the terms and subject to the conditions set forth in the Offer (including, if the Offer is extended or amended, the terms and conditions of any such extension or amendment), we will accept for payment and pay for all Shares that are validly tendered before the Expiration Date and not withdrawn. The term "Expiration Date" means 12:00 Midnight, New York City time, on Wednesday, February 14, 2007, unless extended, in which event "Expiration Date" means the latest time and date at which the Offer, as so extended, shall expire.

Parent, the Purchaser and the Company have agreed in the Merger Agreement that the Purchaser will extend the Offer (i) from time to time for successive periods of no more than 10 business days each (or such longer period as consented to by the Company, which consent shall not be unreasonably withheld) if, at the scheduled or extended expiration date of the Offer, any of the conditions to the Offer shall not have been satisfied or waived, until such conditions are satisfied or waived and (ii) for any period required by any rule, regulation, interpretation or position of the SEC or the staff thereof applicable to the Offer or any period required by applicable law. During any extension, all Shares previously tendered and not withdrawn will remain subject to the Offer and subject to the right of each tendering stockholder to withdraw its Shares.

Pursuant to the Merger Agreement, the Purchaser has agreed that without the consent of the Company, (1) the Minimum Condition may not be waived, (2) no change may be made that changes the form of consideration to be paid, decreases the Offer Price or the number of Shares sought in the Offer or imposes conditions to the Offer in addition to those set forth in "The Offer — Section 15" or amends any terms of the Offer in any manner adverse to the holders of Shares and (3) the Offer may not be extended except as set forth in the Merger Agreement.

The Offer is subject to the conditions set forth in "The Offer — Section 15," which include, among other things, satisfaction of the Minimum Condition and any waiting periods under applicable antitrust laws having expired or been terminated. We believe the minimum number of Shares that must be tendered in order to achieve the Minimum Condition is approximately 21,993,259 Shares (assuming full conversion of the Preferred Shares into Common Shares and no extension of the Expiration Date). All of the Company's directors and executive officers, who collectively own 943,817 outstanding Common Shares (excluding the shares issuable upon exercise of outstanding options), and all of the holders of the Preferred Shares, who collectively own 3,606,900 Common Shares and 10,400 Preferred Shares, collectively representing approximately 25% of the Company's issued and outstanding Common Shares as of January 7, 2007 (assuming full conversion of Preferred Shares), have already agreed to tender their Shares into the Offer pursuant to the Tender and Support Agreement.

If any such condition to the Offer is not satisfied on or prior to the Expiration Date, subject to the terms and conditions contained in the Merger Agreement and the rules and regulations of the SEC, the Purchaser (i) shall not be required to accept for payment or pay for any tendered Shares, (ii) may delay the acceptance for payment of, or the payment for, any tendered Shares, (iii) may terminate or amend the Offer as to Shares not then paid and (iv) may, and expressly reserves the right to, waive such condition (other than the Minimum Condition) and purchase all Shares validly tendered prior to the Expiration Date, and not withdrawn.

Except as set forth above, and subject to the terms and conditions contained in the Merger Agreement and the rules and regulations of the SEC, we expressly reserve the right to increase the Offer Price or amend the Offer in any respect. If we change the percentage of Shares being sought or change the consideration to be paid for Shares pursuant to the Offer and the Offer is scheduled to expire at any time before the expiration of a period of 10 business days from, and including, the date that notice of such change is first published, sent or given in the manner specified below, the Offer shall be extended until the expiration of such period of 10 business days. If we make any other material change in the terms of or information concerning the Offer or waive a material condition of the Offer, we will extend the Offer, if required by applicable law, for a period sufficient to allow you to consider the amended terms of the Offer. In a published release, the SEC has stated that in its view an offer must remain open for a minimum period of time following a material change in the terms of such offer and that the waiver of a condition is a material change in the terms of an offer. The release states that an offer should remain open for a minimum of five business days from the date the material change is first published, sent or given to stockholders, and that if material changes are made with respect to information that approaches the significance of price and share levels, a minimum of 10 business days may be required to allow adequate dissemination and investor response. "Business day" means any day other than Saturday, Sunday or a U.S. Federal holiday and consists of the time period from 12:01 A.M. through 12:00 Midnight, New York City time.

If we extend the Offer, are delayed in accepting for payment or paying for Shares or are unable to accept for payment or pay for Shares pursuant to the Offer for any reason, then, without prejudice to our rights under the Offer, the Depositary may, on our behalf, retain all Shares tendered, and such Shares may not be withdrawn except as provided in "The Offer — Section 4." Our reservation of the right to delay acceptance for payment of or payment for Shares is subject to applicable law, which requires that we pay the consideration offered or return the Shares deposited by or on behalf of stockholders promptly after the termination or withdrawal of the Offer.

Any extension, delay, termination, waiver or amendment of the Offer will be followed as promptly as practicable by a public announcement thereof, such announcement in the case of an to be issued no later than 9:00 A.M., New York City time, on the next business day after the previously scheduled Expiration Date.

After the expiration of the Offer, we may, but are not obligated to, include one or more subsequent offering periods to permit additional tenders of Shares (a "Subsequent Offering Period"). Pursuant to Rule 14d-11 under the 1934 Act, we may include any Subsequent Offering Period so long as, among other things, (i) the Offer remains open for a minimum of 20 business days and has expired, (ii) all conditions to the Offer are satisfied or waived by us on or before the Expiration Date, (iii) we accept and promptly pay for all Shares validly tendered during the Offer, (iv) we announce the results of the Offer, including the approximate number and percentage of Shares deposited in the Offer, no later than 9:00 A.M., New York City time, on the next business day after the Expiration Date and immediately begin the Subsequent Offering Period and (v) we immediately accept and promptly pay for Shares as they are tendered during the Subsequent Offering Period. In addition, we may extend any initial Subsequent Offering Period by any period or periods, provided that the aggregate of the Subsequent Offering Period (including extensions thereof) is no more than 20 business days. No withdrawal rights apply to Shares tendered in any Subsequent Offering Period, and no withdrawal rights apply during any Subsequent Offering Period with respect to Shares previously tendered in the Offer and accepted for payment. The same price paid in the Offer will be paid to stockholders tendering Shares in a Subsequent Offering Period, if one is included.

We do not currently intend to include a Subsequent Offering Period, although we reserve the right to do so. If we elect to include or extend any Subsequent Offering Period, we will make a public announcement of such inclusion or extension no later than 9:00 A.M., New York City time, on the next business day after the Expiration Date or date of termination of any prior Subsequent Offering Period.

In connection with the Offer, the Company has provided us with mailing labels and security position listings for the purpose of disseminating the Offer to holders of Shares. We will send this Offer to Purchase, the related Letter of Transmittal and other related documents to record holders of Shares and to brokers, dealers, banks, trust companies and other nominees whose names appear on the stockholder list or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of Shares.

2. Acceptance for Payment; Payment.

Upon the terms and subject to the conditions of the Offer, we will accept for payment and pay for all Shares validly tendered before the Expiration Date and not withdrawn promptly after the later of the Expiration Date and the satisfaction or waiver of all conditions that are dependent upon the receipt of governmental approvals set forth in "The Offer — Section 15." Subject to the rules and regulations of the SEC, including Rule 14e-1(c) under the 1934 Act, we reserve the right, in our reasonable discretion and subject to applicable law, to delay the acceptance for payment or payment for Shares until satisfaction of all conditions to the Offer that are dependent upon the receipt of governmental approvals. If we increase the consideration to be paid for Shares pursuant to the Offer, we will pay such increased consideration for all Shares purchased pursuant to the Offer.

We will pay for Shares accepted for payment pursuant to the Offer by depositing the purchase price with the Depositary, which will act as your agent for the purpose of receiving payments from us and transmitting such payments to you. In all cases, payment for Shares accepted for payment pursuant to the Offer will be made only after timely receipt by the Depositary of (i) certificates for such Shares (or a confirmation of a book-entry transfer of such Shares into the Depositary's account at the Book-Entry Transfer Facility (as defined in "The Offer — Section 3 — Book-Entry Delivery")), (ii) a properly completed and duly executed Letter of Transmittal (or facsimile thereof) and (iii) any other required documents. For a description of the procedure for tendering Shares pursuant to the Offer, see "The Offer — Section 3." Accordingly, payment may be made to tendering stockholders at different times if delivery of the Shares and other required documents occurs at different times. **Under no circumstances will we pay interest on the consideration paid for Shares pursuant to the Offer, regardless of any delay in making such payment.**

For purposes of the Offer, we shall be deemed to have accepted for payment tendered Shares when, as and if we give oral or written notice of our acceptance to the Depositary.

We reserve the right to transfer or assign, in whole or from time to time in part, to one or more of our affiliates the right to purchase Shares tendered pursuant to the Offer, but any such transfer or assignment will not relieve us of our obligations under the Offer or prejudice your rights to receive payment for Shares validly tendered and accepted for payment.

If any tendered Shares are not purchased pursuant to the Offer for any reason, or if certificates are submitted for more Shares than are tendered, certificates for such unpurchased or untendered Shares will be returned (or, in the case of Shares tendered by book-entry transfer, such Shares will be credited to an account maintained at the Book-Entry Transfer Facility), without expense to you, promptly following the expiration or termination of the Offer.

3. Procedure for Tendering Shares.

Valid Tender of Shares. To tender Shares pursuant to the Offer, either (i) the Depositary must receive at one of its addresses set forth on the back cover of this Offer to Purchase (a) a properly completed and duly executed Letter of Transmittal and any other documents required by the Letter of Transmittal and (b) certificates for the Shares to be tendered or delivery of such Shares pursuant to the procedures for book-entry transfer described below (and a confirmation of such delivery including an Agent's Message (as defined below) if the tendering stockholder has not delivered a Letter of Transmittal), in each case by the Expiration Date or (ii) the guaranteed delivery procedure described below must be complied with.

The method of delivery of Shares and all other required documents, including through the Book-Entry Transfer Facility, is at your option and risk, and delivery will be deemed made only when actually received by the Depositary. If certificates for Shares are sent by mail, we recommend registered mail with return receipt requested, properly insured, in time to be received on or prior to the Expiration Date.

The tender of Shares pursuant to any one of the procedures described above will constitute your acceptance of the Offer, as well as your representation and warranty that (i) you own the Shares being tendered within the meaning of Rule 14e-4 under the 1934 Act, (ii) the tender of such Shares complies with Rule 14e-4 under the 1934 Act and (iii) you have the full power and authority to tender, sell, assign and transfer the Shares tendered, as specified in the Letter of Transmittal. Our acceptance for payment of Shares tendered by you pursuant to the Offer will constitute a binding agreement between us with respect to such Shares, upon the terms and subject to the conditions of the Offer.

Stockholders tendering their Shares according to the guaranteed delivery procedures set forth under "The Offer — Section 3 — Guaranteed Delivery" may do so using the Notice of Guaranteed Delivery circulated herewith.

Book-Entry Delivery. The Depositary will notify The Depository Trust Company (the "Book-Entry Transfer Facility") for purposes of the Offer within two business days after the date of this Offer to Purchase. Any financial institution that is a participant in the system of the Book-Entry Transfer Facility may deliver Shares by causing the Book-Entry Transfer Facility to transfer such Shares into the Depositary's account in accordance with the procedures of the Book-Entry Transfer Facility. However, although delivery of Shares may be effected through book-entry transfer, the Letter of Transmittal (or facsimile thereof) properly completed and duly executed together with any required signature guarantees or an Agent's Message and any other required documents must, in any case, be received by the Depositary at one of its addresses set forth on the back cover of this Offer to Purchase by the Expiration Date, or the guaranteed delivery procedure described below must be complied with. Delivery of the Letter of Transmittal and any other required documents to the Book-Entry Transfer Facility does not constitute delivery to the Depositary. "Agent's Message" means a message, transmitted by the Book-Entry Transfer Facility to, and received by, the Depositary and forming a part of a book-entry confirmation stating that the Book-Entry Transfer Facility has received an express acknowledgment from the participant in the Book-Entry Transfer Facility tendering the Shares that are the subject of such book-entry confirmation that such participant has received, and agrees to be bound by, the terms of the Letter of Transmittal and that the Company may enforce such agreement against such participant.

Signature Guarantees. All signatures on a Letter of Transmittal must be guaranteed by a financial institution (including most banks, savings and loan associations and brokerage houses) that is a member of a recognized Medallion Program approved by The Securities Transfer Association Inc., including the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchange Medallion Program (SEMP) and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) or any other "eligible guarantor institution" (as such term is defined in Rule 17Ad-15 under the 1934 Act) (each an "Eligible

Institution"), unless (i) the Letter of Transmittal is signed by the registered holder of the Shares tendered therewith and such holder has not completed the box entitled "Special Payment Instructions" on the Letter of Transmittal or (ii) such Shares are tendered for the account of an Eligible Institution. See Instructions 1 and 5 of the Letter of Transmittal.

Guaranteed Delivery. If you wish to tender Shares pursuant to the Offer and cannot deliver such Shares and all other required documents to the Depositary by the Expiration Date or cannot complete the procedure for delivery by book-entry transfer on a timely basis, you may nevertheless tender such Shares if all of the following conditions are met:

- such tender is made by or through an Eligible Institution;
- a properly completed and duly executed Notice of Guaranteed Delivery in the form provided by the Purchaser is received by the Depositary (as provided below) by the Expiration Date; and
- the certificates for such Shares (or a confirmation of a book-entry transfer of such Shares into the Depositary's account at the Book-Entry Transfer Facility), together with a properly completed and duly executed Letter of Transmittal (or facsimile thereof) together with any required signature guarantee or an Agent's Message and any other required documents, are received by the Depositary within three Nasdaq Global Market ("Nasdaq") trading days after the date of execution of the Notice of Guaranteed Delivery.

The Notice of Guaranteed Delivery may be delivered by hand or transmitted by telegram, telex, facsimile transmission or mail to the Depositary and must include a guarantee by an Eligible Institution in the form set forth in the Notice of Guaranteed Delivery.

Backup Withholding. Under the U.S. Federal income tax laws, backup withholding will apply to any payments made pursuant to the Offer unless you provide the Depositary with your correct taxpayer identification number and certify that you are not subject to such backup withholding by completing the Substitute Form W-9 included in the Letter of Transmittal or otherwise establish an exemption. If you are a non-resident alien or foreign entity not subject to backup withholding, you must give the Depositary a completed Form W-8BEN Certificate of Foreign Status (or other applicable Form W-8) before receipt of any payment in order to avoid backup withholding.

Appointment of Proxy. By executing a Letter of Transmittal, you irrevocably appoint our designees as your proxies in the manner set forth in the Letter of Transmittal to the full extent of your rights with respect to the Shares tendered and accepted for payment by us (and any and all other Shares or other securities issued or issuable in respect of such Shares on or after January 7, 2007). All such proxies are irrevocable and coupled with an interest in the tendered Shares. Such appointment is effective only upon our acceptance for payment of such Shares. Upon such acceptance for payment, all prior proxies and consents granted by you with respect to such Shares and other securities will, without further action, be revoked, and no subsequent proxies may be given (and, if previously given, will cease to be effective). Our designees will be empowered to exercise all your voting and other rights as they, in their reasonable discretion, may deem proper at any annual, special or adjourned meeting of the Company's stockholders. We reserve the right to require that, in order for Shares to be deemed validly tendered, immediately upon our acceptance for payment of such Shares, we or our designee must be able to exercise full voting rights with respect to such Shares and other securities (including voting at any meeting of stockholders).

The foregoing proxies are effective only upon acceptance for payment of Shares pursuant to the Offer. The Offer does not constitute a solicitation of proxies, absent a purchase of Shares, for any meeting of the Company's stockholders.

Determination of Validity. We will determine, in our reasonable discretion, all questions as to the form of documents and the validity, eligibility (including time of receipt) and acceptance for payment of any tender of Shares, and our determination shall be final and binding. We reserve the absolute right to reject any or all tenders of Shares that we determine not to be in proper form or the acceptance for payment of or payment for which may, in the opinion of our counsel, be unlawful. We also reserve the absolute right to waive any defect or irregularity in any tender of Shares. None of the Purchaser, the Depositary, the Information Agent or any other person will be under any duty to give notification of any defect or irregularity in tenders or waiver of any such defect or irregularity or incur any liability for failure to give any such notification.

4. Withdrawal Rights.

You may withdraw any tenders of Shares made pursuant to the Offer at any time before the Expiration Date. Thereafter, such tenders are irrevocable, except that they may be withdrawn after March 19, 2007, unless such Shares have been accepted for payment as provided in this Offer to Purchase. If we extend the period of time during which the Offer is open, are delayed in

accepting for payment or paying for Shares or are unable to accept for payment or pay for Shares pursuant to the Offer for any reason, then, without prejudice to our rights under the Offer, the Depositary may, on our behalf, retain all Shares tendered, and such Shares may not be withdrawn except as otherwise provided in this Section 4.

For your withdrawal to be effective, a written, telegraphic, telex or facsimile transmission notice of withdrawal with respect to the Shares must be timely received by the Depositary at one of its addresses set forth on the back cover of this Offer to Purchase, and the notice of withdrawal must specify the name of the person who tendered the Shares to be withdrawn, the number of Shares to be withdrawn and the name of the registered holder of Shares, if different from that of the person who tendered such Shares. If the Shares to be withdrawn have been delivered to the Depositary, a signed notice of withdrawal with (except in the case of Shares tendered by an Eligible Institution) signatures guaranteed by an Eligible Institution must be submitted before the release of such Shares. In addition, such notice must specify, in the case of Shares tendered by delivery of certificates, the name of the registered holder (if different from that of the tendering stockholder) and the serial numbers shown on the particular certificates evidencing the Shares to be withdrawn or, in the case of Shares tendered by book-entry transfer, the name and number of the account at the Book-Entry Transfer Facility to be credited with the withdrawn Shares. Withdrawals may not be rescinded, and Shares withdrawn will thereafter be deemed not validly tendered. However, withdrawn Shares may be retendered by again following one of the procedures described in "The Offer — Section 3" at any time before the Expiration Date.

If we include any Subsequent Offering Period following the Offer, no withdrawal rights will apply to Shares tendered in such Subsequent Offering Period and no withdrawal rights apply during such Subsequent Offering Period with respect to Shares previously tendered in the Offer and accepted for payment.

We will determine, in our reasonable discretion, all questions as to the form and validity (including time of receipt) of any notice of withdrawal, and our determination shall be final and binding. None of the Purchaser, the Depositary, the Information Agent or any other person will be under any duty to give notification of any defect or irregularity in any notice of withdrawal or waiver of any such defect or irregularity or incur any liability for failure to give any such notification.

5. Certain Tax Considerations.

The U.S. Federal income tax discussion set forth below is included for general information only and is based upon present law. Due to the individual nature of tax consequences, you are urged to consult your tax advisors as to the specific tax consequences to you of the Offer, including the effects of applicable state, local and other tax laws. The following discussion may not apply to certain stockholders. For example, the following discussion may not apply to you if you acquired your Shares pursuant to the exercise of stock options or other compensation arrangements with the Company, you are not a citizen or resident of the United States or you are otherwise subject to special tax treatment under the Internal Revenue Code of 1986, as amended.

Your sale of Shares pursuant to the Offer will be a taxable transaction for U.S. federal income tax purposes and may also be a taxable transaction under applicable state, local and other tax laws. In general, if you tender Shares pursuant to the Offer, you will recognize gain or loss equal to the difference between the tax basis of your Shares and the amount of cash received in exchange therefor. Gain or loss will be determined separately for each block of shares (i.e., shares acquired at the same cost in a single transaction) sold pursuant to the Offer. Such gain or loss will be capital gain or loss if you hold the Shares as capital assets and will be long-term capital gain or loss if your holding period for the Shares is more than one year as of the date of the sale of such Shares.

A stockholder whose Shares are purchased in the Offer may be subject to backup withholding unless certain information is provided to the Depositary or an exemption applies. See "The Offer — Section 3 — Backup Withholding."

6. Price Range of Shares; Dividends.

The Common Shares are listed and principally traded on Nasdaq under the symbol TWAV. The following table sets forth for the periods indicated the high and low closing sales prices per Share on Nasdaq as reported in published financial sources:

	High	Low
Fiscal year ended April 1, 2007		
Fourth Quarter (through January 5, 2007)	$1.26	$1.25
Third Quarter	1.25	1.02
Second Quarter	1.46	1.01
First Quarter	1.75	1.22
Fiscal year ended April 2, 2006		
Fourth Quarter	2.15	1.38
Third Quarter	1.80	1.28
Second Quarter	2.62	1.69
First Quarter	2.38	1.39
Fiscal year ended April 3, 2005		
Fourth Quarter	3.48	1.67
Third Quarter	3.75	2.99
Second Quarter	4.93	3.06
First Quarter	4.78	3.05

The Company has never paid a cash dividend on the Common Shares. If we acquire control of the Company, we currently intend that no dividends will be declared on the Common Shares.

On January 5, 2007, the last full trading day before the announcement of our intention to commence the Offer, the last reported sales price of the Common Shares reported on Nasdaq was $1.25 per Share. **Please obtain a recent quotation for your Shares prior to deciding whether or not to tender.**

The Preferred Shares are not listed on any exchange and there is no established trading market for the Preferred Shares.

Pursuant to the terms of the Company's Certificate of Designation of Rights, Preferences and Privileges of the Series B Convertible Preferred Stock, the Preferred Shares accrue dividends of 6% per annum of the "Liquidation Value" (as defined therein) of the Preferred Shares, which Liquidation Value is currently $1,000 per share. Upon conversion of the Preferred Shares, any accrued and unpaid dividends are converted into Common Shares at the then-applicable conversion price, currently $1.55 per share. At the time of the consummation of the Offer, the Preferred Shares will be treated as if converted at the time of consummation of the Offer, and we shall pay the Offer Price for each Common Share into which such Preferred Shares are convertible.

7. Possible Effects of the Offer on the Market for the Shares; Stock Quotation; Registration under the 1934 Act; Margin Regulations.

Possible Effects of the Offer on the Market for the Shares. If the Merger is consummated, stockholders not tendering their Common Shares in the Offer (other than those properly exercising their dissenters' rights) will receive cash in an amount equal to the price per Share paid in the Offer, without interest. Therefore, if the Merger takes place, the only difference between tendering and not tendering Common Shares in the Offer is that tendering stockholders will be paid earlier. If, however, the Merger does not take place and the Offer is consummated, the number of stockholders and the number of Common Shares that are still in the hands of the public may be so small that there will no longer be an active or liquid public trading market (or possibly any public trading market) for Common Shares held by stockholders other than the Purchaser. We cannot predict whether the reduction in the number of Common Shares that might otherwise trade publicly would have an adverse or beneficial effect on the market price for, or marketability of, the Common Shares or whether such reduction would cause future market prices to be greater or less than the price paid in the Offer. Pursuant to the Tender and Support Agreement, all holders of Preferred Shares have agreed to tender their Shares in the Offer.

Stock Quotation. Depending upon the number of Common Shares purchased pursuant to the Offer, the Common Shares may no longer meet the standards for continued inclusion in Nasdaq. If, as a result of the purchase of Common Shares pursuant to the Offer, the Common Shares no longer meet the criteria for continuing inclusion in Nasdaq, the market for the Common Shares could be adversely affected. According to Nasdaq's published guidelines, the Common Shares would not meet the criteria for continued inclusion in Nasdaq if, among other things, the number of publicly held Common Shares were less than 750,000, the aggregate market value of the publicly held Common Shares were less than $5,000,000 or there were fewer than two market makers for the Common Shares. If, as a result of the purchase of the Common Shares pursuant to the Offer, the Common Shares no longer meet these standards, the quotations on Nasdaq will be discontinued. In the event the Common Shares were no longer quoted on Nasdaq, quotations might still be available from other sources. The extent of the public market for the Common Shares and availability of such quotations would, however, depend upon such factors as the number of holders and/or the aggregate market value of the publicly held Common Shares at such time, the interest in maintaining a market in the Common Shares on the part of securities firms, the possible termination of registration of the Common Shares under the 1934 Act and other factors. The Preferred Shares are not listed on any exchange and there is no established trading market for the Preferred Shares.

Registration under the 1934 Act. The Common Shares are currently registered under the 1934 Act. Such registration may be terminated upon application of the Company to the SEC if the Common Shares are neither listed on a national securities exchange nor held by 300 or more holders of record. Termination of the registration of the Common Shares under the 1934 Act would substantially reduce the information required to be furnished by the Company to holders of Common Shares and to the SEC and would make certain of the provisions of the 1934 Act, such as the short-swing profit recovery provisions of Section 16(b), the requirement to furnish a proxy statement pursuant to Section 14(a) in connection with a stockholders' meeting and the related requirement to furnish an annual report to stockholders and the requirements of Rule 13e-3 under the 1934 Act with respect to "going private" transactions, no longer applicable to the Common Shares. Furthermore, "affiliates" of the Company and persons holding "restricted securities" of the Company may be deprived of the ability to dispose of such securities pursuant to Rule 144 promulgated under the Securities Act of 1933. If registration of the Common Shares under the 1934 Act were terminated, the Common Shares would no longer be "margin securities" or eligible for listing or Nasdaq reporting. We intend to seek to cause the Company to terminate registration of the Common Shares under the 1934 Act as soon after consummation of the Offer as the requirements for termination of registration of the Shares are met.

Margin Regulations. The Common Shares are currently "margin securities" under the regulations of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), which has the effect, among other things, of allowing brokers to extend credit on the collateral of such Common Shares. Depending upon factors similar to those described above regarding listing and market quotations, the Common Shares might no longer constitute "margin securities" for the purposes of the Federal Reserve Board's margin regulations and, therefore, could no longer be used as collateral for loans made by brokers.

The Preferred Shares are not registered under the 1934 Act and are not "margin securities".

8. Certain Information Concerning the Company.

The information concerning the Company contained in this Offer to Purchase has been taken from or based upon publicly available documents and records on file with the SEC and other public sources and is qualified in its entirety by reference thereto. None of Parent, the Purchaser, the Information Agent or the Depositary can take responsibility for the accuracy or completeness of the information contained in such documents and records or for any failure by the Company to disclose events which may have occurred or may affect the significance or accuracy of any such information but which are unknown to Parent, the Purchaser, the Information Agent or the Depositary.

General. The Company is a Delaware corporation with its principal executive offices located at 1250 Reliance Way, Fremont, California 94539. The Company's telephone number is (510) 668-2200. The Company develops, manufactures, markets and services process control metrology systems used in the manufacture of semiconductors.

Additional Information. The Company is subject to the informational requirements of the 1934 Act and in accordance therewith files periodic reports, proxy statements and other information with the SEC relating to its business, financial condition and other matters. The Company is required to disclose in such proxy statements certain information, as of particular dates, concerning the Company's directors and officers, their remuneration, stock options granted to them, the principal holders of the Company's securities and any material interest of such persons in transactions with the Company. Such reports, proxy statements and other information may be read and copied at the SEC's Public Reference Room at 100 F Street, N.E.,

Washington, D.C. 20549, or at the Web site maintained by the SEC at http://www.sec.gov. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330.

9. Certain Information Concerning the Purchaser and Parent.

We are a Delaware corporation incorporated on November 30, 2006, with principal executive offices at One Technology Drive, San Jose, California 95035. The telephone number of our principal executive offices is (408) 875-3000. To date, we have engaged in no activities other than those incident to our formation and the commencement of the Offer. We are a wholly-owned subsidiary of Parent.

Parent is a Delaware corporation with principal executive offices at One Technology Drive, San Jose, California 95035. The telephone number of Parent's principal executive offices is (408) 875-3000. Parent is a leading supplier of process control and yield management solutions for the semiconductor and related microelectronics industries. Parent's comprehensive portfolio of products, software, analysis, services and expertise is designed to help integrated circuit manufacturers manage yield throughout the entire fabrication process — from research and development to final mass-production yield analysis. Parent offers a broad spectrum of products and services that are used by virtually every major wafer, integrated circuit and photomask manufacturer in the world.

The name, business address, current principal occupation or employment, five year material employment history and citizenship of each director and executive officer of Parent and the Purchaser and certain other information are set forth on Annex I hereto.

Except as set forth elsewhere in this Offer to Purchase or Annex I to this Offer to Purchase: (i) none of Parent, the Purchaser and, to Parent's and the Purchaser's knowledge, the persons listed in Annex I hereto or any associate or majority owned subsidiary of Parent, the Purchaser or of any of the persons so listed, beneficially owns or has a right to acquire any Shares or any other equity securities of the Company; (ii) none of Parent, the Purchaser and, to Parent's and the Purchaser's knowledge, the persons or entities referred to in clause (i) above has effected any transaction in the Shares or any other equity securities of the Company during the past 60 days; (iii) none of Parent, the Purchaser and, to Parent's and the Purchaser's knowledge, the persons listed in Annex I to this Offer to Purchase, has any contract, arrangement, understanding or relationship with any other person with respect to any securities of the Company (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or the giving or withholding of proxies, consents or authorizations); (iv) during the two years before the date of this Offer to Purchase, there have been no transactions between Parent, the Purchaser, their subsidiaries or, to Parent's and the Purchaser's knowledge, any of the persons listed in Annex I to this Offer to Purchase, on the one hand, and the Company or any of its executive officers, directors or affiliates, on the other hand, that would require reporting under SEC rules and regulations; and (v) during the two years before the date of this Offer to Purchase, there have been no contracts, negotiations or transactions between Parent, the Purchaser, their subsidiaries or, to Parent's and the Purchaser's knowledge, any of the persons listed in Annex I to this Offer to Purchase, on the one hand, and the Company or any of its subsidiaries or affiliates, on the other hand, concerning a merger, consolidation or acquisition, a tender offer or other acquisition of securities, an election of directors or a sale or other transfer of a material amount of assets.

Delayed Filings and Notice of Delisting from Nasdaq. The filing of Parent's annual report on Form 10-K for the fiscal year ended June 30, 2006, and its quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2006 have been delayed because Parent has not yet completed the restatement of its financial statements required due to the retroactive pricing of certain stock options. On September 14, 2006 Parent received a Nasdaq Staff Determination notice relating to its annual report on Form 10-K indicating that Parent is not in compliance with the filing requirements for continued listing as set forth in Nasdaq Marketplace Rule 4310(c)(14) and that Parent's common stock was subject to delisting from Nasdaq. Parent appealed the Nasdaq Staff Determination and appeared in a hearing before the Nasdaq Listings Qualifications Panel on October 26, 2006. On November 14, 2006, Parent received an additional Nasdaq Staff Determination Notice relating to its quarterly report on Form 10-Q. The notices, which Parent expected, were issued in accordance with standard Nasdaq procedures. On January 3, 2007, Parent received notice from the Nasdaq Listings Qualifications Panel that it had determined to grant Parent's request for continued listing, subject to the condition that Parent becomes current in its delinquent periodic reports by January 31, 2007.

Additional Information. Subject to the subsection entitled, "Delayed Filings and Notice of Delisting from Nasdaq," Parent is subject to the informational requirements of the 1934 Act and in accordance therewith files periodic reports, proxy statements and other information with the SEC relating to its business, financial condition and other matters. Parent is required

to disclose in such proxy statements certain information, as of particular dates, concerning its directors and officers, their remuneration, stock options granted to them, the principal holders of its securities and any material interests of such persons in transactions with Parent. Such reports, proxy statements and other information are available for inspection and copying at the offices of the SEC in the same manner as set forth with respect to the Company in "The Offer — Section 8."

10. Source and Amount of Funds.

We estimate that we will need approximately $74 million to purchase all of the outstanding Shares pursuant to the Offer and to pay all related fees and expenses. Parent expects to contribute or otherwise advance funds to enable us to consummate the Offer. We expect to have sufficient cash on hand at the expiration of the Offer to pay the offer price for all shares in the Offer. The Offer is not conditioned upon any financing arrangements.

11. Background of the Offer and the Merger; Past Contacts or Negotiations with the Company.

The information set forth below regarding Therma-Wave was provided by Therma-Wave and none of the Purchaser or KLA-Tencor takes any responsibility for the accuracy or completeness of any information regarding meetings or discussions in which KLA-Tencor or its affiliates or representatives did not participate.

As part of the continuous evaluation of its businesses and plans, KLA-Tencor regularly evaluates different strategies to improve its business position and enhance value for its stockholders, including opportunities for acquisitions of other companies or their assets.

From early February 2006 through late April 2006, Papken S. Der Torossian, the Chairman of the Company Board, and Boris Lipkin, the President and Chief Executive Officer of Therma-Wave, and other representatives of Therma-Wave had discussions with Gary Bultman, Senior Vice President of Business Development of KLA-Tencor, and other representatives of KLA-Tencor regarding a potential business combination with Therma-Wave.

On April 27, 2006, KLA-Tencor and Therma-Wave entered into a mutual non-disclosure agreement to facilitate the mutual sharing of information in order to allow KLA-Tencor and Therma-Wave to evaluate a potential transaction. On the same day, KLA-Tencor delivered to Therma-Wave a preliminary non-binding term sheet, subject to change based upon the results of KLA-Tencor's due diligence, that provided for a cash merger at a price of $1.52 in cash per Common Share, which was the closing price per Common Share on Nasdaq on April 26, 2006. The term sheet contemplated that the transaction would be structured as a statutory merger. The term sheet also contemplated that the Company Board would have the right, under certain conditions, to explore and take other steps with respect to unsolicited proposals it might receive after execution of an agreement with KLA-Tencor. The term sheet required Therma-Wave to pay to KLA-Tencor a break up fee under certain circumstances. The term sheet also called for Therma-Wave to agree to negotiate exclusively with KLA-Tencor until May 31, 2006.

On May 5, 2006, Messrs. Der Torossian and Lipkin met with Richard P. Wallace, the Chief Executive Officer of KLA-Tencor, and other representatives of KLA-Tencor regarding the terms of a potential business combination, including the potential purchase price. Therma-Wave indicated its unwillingness to consummate a transaction based on the terms of KLA-Tencor's preliminary non-binding term sheet of April 26, 2006 and KLA-Tencor did not agree to revise the term sheet.

Representatives of Therma-Wave and KLA-Tencor continued to meet to discuss the potential terms of a business combination, including price. On May 15, 2006, KLA-Tencor and Therma-Wave entered into an amended mutual non-disclosure agreement, which contained standstill provisions under which KLA-Tencor and Therma-Wave agreed, until the earlier of 12 months or upon a change of control of the other party, not to acquire any voting securities, make or participate in the solicitation of proxies to vote any voting securities, submit a proposal for or otherwise act or seek to control or influence the management, board of directors or policies, of the other party without the consent of the board of directors of the other party.

On May 19, 2006, KLA-Tencor delivered a revised preliminary non-binding term sheet, pursuant to which KLA-Tencor changed the proposed purchase price to $1.65 per share of Common Stock, payable in shares of KLA-Tencor stock. The term sheet also called for Therma-Wave to agree to negotiate exclusively with KLA-Tencor until June 15, 2006.

Subsequently, Therma-Wave and KLA-Tencor were unable to agree to the revised terms and agreed to revisit discussions with respect to a potential business combination at a future date.

Between July 10, 2006 and July 14, 2006, Messrs. Der Torossian and Lipkin met with Mr. Wallace while at Semicon West, a semiconductor equipment-related conference in San Francisco, California, to discuss KLA-Tencor's interest in resuming

discussion of a potential business combination between Therma-Wave and KLA-Tencor. Mr. Wallace indicated that KLA-Tencor might be interested in such discussions.

On August 25, 2006, a representative of Needham & Company, Therma-Wave's financial advisor, met with a representative of KLA-Tencor and discussed various matters relating to a potential business combination with Therma-Wave, including a potential purchase price of $1.55 per Common Share.

On September 25, 2006, representatives of KLA-Tencor, Therma-Wave and Needham & Company met at the offices of KLA-Tencor to discuss the general terms of a potential acquisition of Therma-Wave by KLA-Tencor. Discussion focused on the valuation of the KLA-Tencor offer, the structure and potential timing associated with the transaction and the likelihood and extent of regulatory review.

On October 6, 2006, KLA-Tencor delivered a revised non-binding term sheet to Therma-Wave, with a per share consideration of $1.65 in cash per Common Share. The term sheet called for Therma-Wave to agree to negotiate exclusively with KLA-Tencor through a date to be agreed upon by the parties. The closing price of a share of Common Stock on Nasdaq on October 7, 2006 was $1.19 per share.

From October 10, 2006 to November 17, 2006, representatives of KLA-Tencor, Therma-Wave, Needham & Company, Davis Polk & Wardwell, outside counsel to KLA-Tencor, and Morrison & Foerster LLP, outside counsel to Therma-Wave, discussed key issues relating to the potential transaction. The parties contemplated that the acquisition could be effected by means of a tender offer and include a reverse breakup fee payable by KLA-Tencor if the transaction failed to receive regulatory clearance. The discussions were focused on KLA-Tencor's desire to perform substantial in-depth due diligence prior to signing a definitive agreement and to obtain an agreement with Therma-Wave's executive officers and directors and holders of the Preferred Shares under which such persons would agree to tender their shares in the Offer. The parties also addressed concerns relating to the impact on the liquidity and the business and financial condition of Therma-Wave in the event of a delayed period to closing the transaction due to regulatory review or the failure to satisfy other conditions to closing.

On October 30, 2006, KLA-Tencor distributed a revised non-binding term sheet to Therma-Wave. The term sheet contemplated, among other things, an offer for all the common stock of Therma-Wave by a wholly-owned subsidiary of KLA-Tencor for $1.65 per share to be followed by a merger of such subsidiary with and into Therma-Wave, with the consummation of the tender offer conditioned on at least a majority of Therma-Wave's primary shares outstanding having been tendered into the offer by Therma-Wave's shareholders and not withdrawn.

From October 30, 2006 through November 6, 2006, KLA-Tencor, Therma-Wave, Davis Polk and Morrison & Foerster negotiated the material terms of the proposed acquisition based on the October 30, 2006 non-binding term sheet. Negotiation of the term sheet primarily related to the covenants relating to regulatory clearances, the conditions to consummation of the tender offer, the definition of material adverse effect, the conditions to termination of the definitive agreement, including a termination right of Therma-Wave exercisable two months after signing if regulatory clearance had not been obtained, the events that would give rise to a breakup fee and reverse breakup fee and the treatment of employee equity awards in the proposed acquisition.

On November 6, 2006, KLA-Tencor and Therma-Wave entered into a letter agreement that included certain exclusivity provisions. The letter agreement, among other things, prohibited Therma-Wave from soliciting proposals from third parties concerning a business transaction with Therma-Wave. The letter agreement also included provisions under which Therma-Wave agreed to provide access to its personnel, facilities, assets and books to KLA-Tencor for its due diligence relating to the potential acquisition. The expiration date of the letter agreement was December 4, 2006, subject to earlier expiration if the parties agreed to terminate negotiations regarding the potential transaction or if KLA-Tencor notified Therma-Wave that it had determined not to pursue the potential transaction. Representatives of Therma-Wave and KLA-Tencor and their respective advisors thereafter met to discuss the potential transaction and a process for continuing the negotiations.

On November 13, 2006, Therma-Wave provided KLA-Tencor access to a virtual data room containing various nonpublic corporate and financial documents regarding Therma-Wave. Representatives of Therma-Wave and KLA-Tencor met in

connection with KLA-Tencor's due diligence review. KLA-Tencor continued its due diligence efforts until the execution of the Merger Agreement.

On November 17, 2006, KLA-Tencor delivered to Therma-Wave an initial draft of the Merger Agreement. From November 17 until the execution of the Merger Agreement, Therma-Wave and KLA-Tencor and their representatives exchanged drafts of the Merger Agreement and held extensive negotiations relating to its terms and conditions.

On November 22, 2006, KLA-Tencor delivered to Therma-Wave an initial draft of the Tender and Support Agreement under which Therma-Wave's officers and directors and holders of the Preferred Shares would agree, among other things, to support the transaction by tendering their shares in the Offer and voting in favor of the Merger, if necessary. From November 22 until the execution of the Merger Agreement, the officers and directors of Therma-Wave, the holders of the Preferred Shares and KLA-Tencor and their representatives exchanged drafts of the Tender and Support Agreement and held extensive negotiations relating to its terms and conditions.

On December 2, 2006, Messrs. Der Torossian and Lipkin met with Mr. Bultman to discuss the timing of the proposed transaction. Mr. Bultman stated that KLA-Tencor would require additional time to complete its due diligence review of Therma-Wave, and would also require that the exclusivity agreement be extended in order to continue the due diligence process. Messrs. Der Torossian and Lipkin stated that they would discuss such extension with the Company Board.

On December 5, 2006, KLA-Tencor and Therma-Wave entered into an agreement extending the terms of the letter agreement relating to exclusivity to December 22, 2006. The parties entered into subsequent agreements on two occasions to further extended exclusivity through January 7, 2007 to allow KLA-Tencor to continue its due diligence investigation of Therma-Wave.

On December 21, 2006, the Board of Directors of KLA-Tencor convened in its regularly scheduled board meeting and unanimously authorized management to take actions necessary to conclude the transaction or decide that it should not go forward.

On January 5, 2007, the Board of Directors of Therma-Wave convened a special meeting and unanimously approved the Merger Agreement and the consummation of the Offer and the Merger and recommended that the stockholders of Therma-Wave tender their Shares into the Offer.

From January 5, 2007 through January 7, 2007, KLA-Tencor concluded its due diligence investigation and the parties finalized the Therma-Wave disclosure schedule, which set forth certain exceptions to Therma-Wave's representations and warranties in the Merger Agreement.

On January 7, 2007, representatives of KLA-Tencor and Therma-Wave completed final drafting of the Merger Agreement and the schedules thereto. KLA-Tencor and Therma-Wave thereafter executed the Merger Agreement. Concurrently, each director and executive officer of Therma-Wave and the holders of the Preferred Shares executed the Tender and Voting Agreement with KLA-Tencor. On January 8, 2007, Therma-Wave issued a press release announcing the transaction and the execution of the Merger Agreement.

12. Purpose of the Offer; Plans for the Company.

Purpose of the Offer. The purpose of the Offer is to acquire control of, and the entire equity interest in, the Company. Pursuant to the Merger Agreement, Parent is entitled as soon as practicable after consummation of the Offer to seek representation on the Company Board proportionate to its ownership of Shares and to seek to have the Company consummate the Merger pursuant to the Merger Agreement. Pursuant to the Merger, the outstanding Shares not owned by Parent or its subsidiaries (including us) will be converted into the right to receive cash in an amount equal to the price per Share provided pursuant to the Offer.

Approval. Under the Delaware General Corporation Law (the "DGCL"), the approval of the Company Board and the affirmative vote of the holders of a majority of the outstanding Common Shares and Preferred Shares, on an as-converted basis, voting together as a single class, may be required to approve and adopt the Merger Agreement and the transactions contemplated thereby including the Merger. The Company Board has unanimously approved and adopted the Merger Agreement and the transactions contemplated thereby and, unless the Merger is consummated pursuant to the short-form merger provisions under

the DGCL described below, the only remaining required corporate action of the Company is the adoption of the Merger Agreement by the affirmative vote of the holders of a majority of the Common Shares and Preferred Shares, on an as-converted basis, voting together as a single class. If stockholder approval for the Merger is required, the Parent intends to cause the Company's Board of Directors to set the record date for the stockholder approval for a date as promptly as practicable following the consummation of the Offer. Accordingly, if the Minimum Condition is satisfied, we believe the Purchaser will have sufficient voting power to cause the approval and adoption of the Merger Agreement and the transactions contemplated thereby without the affirmative vote of any other stockholders.

Stockholder Meetings. In the Merger Agreement, the Company has agreed, if a stockholder vote is required, to convene a meeting of its stockholders following consummation of the Offer for the purpose of considering and voting on the Merger. The Company, acting through its Board of Directors, has further agreed that, if a stockholders' meeting is convened, the Company's Board of Directors shall recommend that stockholders of the Company vote to adopt and approve the Merger Agreement and the Merger. At any such meeting, all of the Shares then owned by the Parent and the Purchaser and by any of the Parent's other subsidiaries, and all Shares for which the Company has received proxies to vote, will be voted in favor of adoption of the Merger Agreement and approval of the Merger.

Board Representation. See Section 13 entitled "The Transaction Documents" of this Offer to Purchase. The Parent currently intends to designate a majority of the directors of the Company following consummation of the Offer. It is currently anticipated that the Parent will designate Vineet Dharmadhikari, David Fisher, Jeffrey L. Hall, John H. Kispert, Joe Laia, Shubham Maheshwari, Jorge Titinger, Brian Trafas, Bin-ming Tsai, Laurence Wagner and Richard P. Wallace to serve as directors of the Company following consummation of the Offer. The Purchaser expects that such representation would permit the Purchaser to exert substantial influence over the Company's conduct of its business and operations. The foregoing information and certain other information contained in this Offer to Purchase and the Schedule 14D-9 being mailed to stockholders herewith are being provided in accordance with the requirements of Section 14(f) of the 1934 Act and Rule 14f-1 thereunder.

Short-form Merger. Under the DGCL, if the Purchaser acquires, pursuant to the Offer or otherwise, at least 90% of the outstanding Common Shares and 90% of the outstanding Preferred Shares, the Purchaser will be able to approve the Merger without a vote of the Company's stockholders. In such event, the Parent and the Purchaser anticipate that they will take all necessary and appropriate action to cause the Merger to become effective as soon as reasonably practicable after such acquisition, without a meeting of the Company's stockholders. However, if the Purchaser does not acquire at least 90% of the outstanding Common Shares and 90% of the outstanding Preferred Shares pursuant to the Offer or otherwise, a significantly longer period of time would be required to effect the Merger. Pursuant to the Merger Agreement, the Company has agreed to convene a meeting of its stockholders as soon as practicable following consummation of the Offer to consider and vote on the Merger, if a stockholders' vote is required.

Rule 13e-3. The SEC has adopted Rule 13e-3 under the 1934 Act, which is applicable to certain "going private" transactions and under certain circumstances may be applicable to the Merger or another business combination following the purchase of Shares pursuant to the Offer or otherwise in which the Purchaser seeks to acquire the remaining Shares not held by it. The Purchaser believes, however, that Rule 13e-3 will not be applicable to the Merger if the Merger is consummated within one year after the consummation of the Offer at the same per Share price as paid in the Offer. If applicable, Rule 13e-3 requires, among other things, that certain financial information concerning the Company and certain information relating to the fairness of the proposed transaction and the consideration offered to minority stockholders in such transaction be filed with the SEC and disclosed to stockholders prior to consummation of the transaction.

Plans for the Company. In connection with Parent's consideration of the Offer, Parent has developed an initial plan, on the basis of available information, for the combination of the business of the Company with that of Parent. Parent intends to continue reviewing such information as part of a comprehensive review of the Company's business, operations, capitalization and management with a view to optimizing development of the Company's potential in conjunction with Parent's existing business. This planning process will continue throughout the pendency of the Offer and the Merger, but will not be implemented until the completion of the Merger.

Extraordinary Corporate Transactions. Except as described above or elsewhere in this Offer to Purchase, the Parent and the Purchaser have no present plans or proposals that would relate to or result in an extraordinary corporate transaction involving the Company or any of its subsidiaries (such as a merger, reorganization, liquidation, relocation of any operations or sale or other transfer of a material amount of assets), any change in the Company's Board of Directors or management, any material change

in the Company's capitalization or dividend policy or any other material change in the Company's corporate structure or business.

Appraisal Rights. No appraisal rights are available in connection with the Offer. However, if the Merger is consummated, stockholders will have certain rights under the DGCL to dissent and demand appraisal of, and to receive payment in cash of the fair value of, their Common Shares. Such rights to dissent, if the statutory procedures are met, could lead to a judicial determination of the fair value of the Common Shares, as of the day prior to the date on which the stockholders' vote was taken approving the Merger or similar business combination (excluding any element of value arising from the accomplishment or expectation of the Merger), required to be paid in cash to such dissenting holders for their Common Shares. In addition, such dissenting stockholders would be entitled to receive payment of a fair rate of interest from the date of consummation of the Merger on the amount determined to be the fair value of their Common Shares. In determining the fair value of the Common Shares, the court is required to take into account all relevant factors. Accordingly, such determination could be based upon considerations other than, or in addition to, the market value of the Common Shares, including, among other things, asset values and earning capacity. In *Weinberger v. UOP, Inc.*, the Delaware Supreme Court stated, among other things, that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in an appraisal proceeding. Therefore, the value so determined in any appraisal proceeding could be the same as, or more or less than, the purchase price per Common Share in the Offer or the Merger consideration.

In addition, several decisions by Delaware courts have held that, in certain circumstances, a controlling stockholder of a company involved in a merger has a fiduciary duty to other stockholders which requires that the Merger be fair to such other stockholders. In determining whether a merger is fair to minority stockholders, Delaware courts have considered, among other things, the type and amount of consideration to be received by the stockholders and whether there was fair dealing among the parties. The Delaware Supreme Court stated in *Weinberger* and *Rabkin v. Philip A. Hunt Chemical Corp.* that the remedy ordinarily available to minority stockholders in a cash-out merger is the right to appraisal described above. However, a damages remedy or injunctive relief may be available if a merger is found to be the product of procedural unfairness, including fraud, misrepresentation or other misconduct.

13. The Transaction Documents.

The Merger Agreement. The following summary of certain provisions of the Merger Agreement is qualified in its entirety by reference to the complete text of the Merger Agreement, a copy of which has been filed as Exhibit (d)(1) to the Schedule TO referred to in Section 18 and is incorporated herein by reference. The following summary may not contain all of the information important to you. Capitalized terms used in the following summary and not otherwise defined in this Offer to Purchase have the meanings set forth in the Merger Agreement.

Explanatory Note Regarding Summary of Merger Agreement and Representations and Warranties in the Merger Agreement. The summary of the terms of the Merger Agreement is intended to provide information about the terms of the Merger. The terms and information in the Merger Agreement should not be relied on as disclosures about KLA-Tencor or Therma-Wave without consideration to the entirety of public disclosure by KLA-Tencor and Therma-Wave as set forth in all of their respective public reports with the SEC. The terms of the Merger Agreement (such as the representations and warranties) govern the contractual rights and relationships, and allocate risks, between the parties in relation to the Merger. In particular, the representations and warranties made by the parties to each other in the Merger Agreement have been negotiated between the parties with the principal purpose of setting forth their respective rights with respect to their obligation to close the Merger should events or circumstances change or be different from those stated in the representations and warranties. Matters may change from the state of affairs contemplated by the representations and warranties. KLA-Tencor and Therma-Wave will provide additional disclosure in their public reports to the extent that they are aware of the existence of any material facts that are required to be disclosed under federal securities law and that might otherwise contradict the terms and information contained in the Merger Agreement and will update such disclosure as required by federal securities laws.

The Offer. The Merger Agreement provides that the Offer will be conducted on the terms and subject to the conditions described in "The Offer — Section 1 — Terms of the Offer" and "The Offer — Section 15 — Conditions of the Offer."

The Merger. The Merger Agreement provides that following the satisfaction or waiver of the conditions described below under "Conditions to the Merger," the Purchaser will be merged with and into the Company, and each then outstanding Share (other than Shares owned directly by Parent, the Purchaser or any subsidiary of either the Company or Parent, or the Shares that are held by any stockholder who is entitled to and who properly exercises dissenters' rights under the DGCL) will be converted

into the right to receive cash in an amount equal to the price per Share provided pursuant to the Offer, without interest thereon less any applicable withholding taxes. Shares owned directly by Parent, the Purchaser or the Company immediately prior to the effective time of the Merger will be cancelled at the time of the consummation of the Merger.

Treatment of Stock Options in the Merger. The Merger Agreement provides that contingent on and immediately following the effective time of the Merger, the outstanding options to purchase the Common Shares as of the effective time of the Merger will be treated as follows:

- each outstanding and unvested Company stock option with an exercise price less than $1.65 per Common Share (each, an "In-the-Money Company Option") shall cease to represent a right to acquire Common Shares and shall be converted automatically into an option to purchase shares of KLA-Tencor common stock on the same terms and conditions (including vesting schedule) as applied to such option immediately prior to the effective time of the Merger, except that:
  - the number of shares of KLA-Tencor common stock (rounded down to the nearest whole share) subject to each assumed In-the-Money Company Option shall be determined by multiplying the number of Common Shares subject to the unvested portion of such In-the-Money Company Option by a fraction (the "Option Exchange Ratio"), the numerator of which is the price received per Common Share in the Merger, and the denominator of which is the average closing price per share of KLA-Tencor common stock on the Nasdaq Global Stock Market over the five trading days immediately preceding (but not including) the date of the effective time of the Merger, and
  - the exercise price per share of KLA-Tencor common stock (rounded up to the nearest whole cent) shall equal the per share exercise price of such In-the-Money Company Option immediately prior to the effective time of the Merger divided by the Option Exchange Ratio;
- each (i) In-the-Money Company Option that is fully vested at the effective time of the Merger, (ii) In-the-Money Company Option held by a non-employee director or former director of the Company and (iii) In-the-Money Company Option which by its terms, or the terms of the Company stock option plan or stock incentive plan under which such option was granted, provides that such option shall become fully vested and convert into a right to receive a payment of cash in the Merger or the other transactions contemplated by the Merger Agreement, shall in each case be cancelled at the effective time of the Merger and shall be converted automatically into the right to receive, as soon as practicable after the effective time of the Merger, an amount in cash determined by multiplying (x) the excess, if any, of $1.65 over the applicable exercise price of such option by (y) the number of Common Shares subject to the vested portion of such In-the-Money Company Option; and
- each Company Stock Option that is not an In-the-Money Company Option shall cease to represent a right to acquire Company Shares and shall be cancelled in full.

Vote Required to Approve Merger. The DGCL requires, among other things, that the adoption of any agreement of merger or consolidation of a Delaware corporation must be approved and found advisable by the board of directors of that corporation and, if the "short-form" merger procedure described below is not available, adopted by the holders of at least a majority of that corporation's outstanding voting securities, which, in the case of the Company, would include a majority of the Common Shares and Preferred Shares, on an as-converted basis, voting together as a single class. The Company Board by unanimous resolution has, among other things, (i) declared that the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, are fair to and in the best interests of the stockholders of the Company, (ii) approved and adopted the Merger Agreement and the transactions contemplated thereby and (iii) recommended that the stockholders of the Company tender their Shares to Purchaser pursuant to the Offer and approve and adopt the Merger Agreement and the Merger. Consequently, the only additional corporate action of the Company that may be necessary to effect the Merger is the adoption of the Merger Agreement by the affirmative vote of the holders of at least a majority of the Common Shares and Preferred Shares, on an as-converted basis, voting as a single class, if the "short-form" merger procedure is not available. In the Merger Agreement, the Company has agreed to convene a meeting of its stockholders as soon as practicable after the consummation of the Offer for the purpose of considering and taking action on the Merger Agreement and the transactions contemplated thereby if such action is required by the DGCL.

The DGCL also provides that, if a parent company owns at least 90% of the outstanding shares of each class of stock of a Delaware subsidiary, the parent company may merge that subsidiary into the parent company, or the parent company may merge itself into that subsidiary, pursuant to the "short-form" merger procedures without prior notice to, or the approval of, the other stockholders of the subsidiary. Accordingly, if the Purchaser acquires at least 90% of the outstanding Common Shares and 90%

of the outstanding Preferred Shares pursuant to the Offer or otherwise, it will have sufficient voting power to cause the adoption of the Merger Agreement without prior notice to, or any action by, the Company's other stockholders. In that event, the Company, the Purchaser and Parent have agreed in the Merger Agreement to take all necessary and appropriate action to cause the Merger to become effective as soon as practicable after consummation of the Offer without any action by the Company's other stockholders. If, however, the Purchaser does not acquire at least 90% of the Common Shares and 90% of the outstanding Preferred Shares pursuant to the Offer, or otherwise, a longer period of time would be required to effect the Merger.

Conditions to the Merger. The Merger Agreement provides that the obligations of each party to effect the Merger is subject to the satisfaction or waiver of the following conditions: (a) if required by Delaware Law, the Merger Agreement shall have been adopted by the affirmative vote of the holders of a majority of the Common Shares and Preferred Shares, on an as-converted basis, voting together as a single class; (b) no statute, rule or regulation shall have been enacted or promulgated by any governmental authority, and no order, injunction, judgment, judicial decision, decree, ruling, or other legal restraint shall have been issued, in any case, which prohibits the consummation of the Merger; and (c) the Purchaser shall have purchased the Shares pursuant to the Offer.

Board of Directors. The Merger Agreement provides that upon the acceptance for payment of any Shares pursuant to the Offer, Parent shall be entitled to designate the number of directors, rounded up to the next whole number, on the Company Board that equals the product of (1) the total number of directors on the Company Board (giving effect to the election of any additional directors pursuant to this clause) and (2) the percentage that the number of Shares beneficially owned by Parent and the Purchaser (including Shares accepted for payment) bears to the total number of Shares outstanding, and the Company shall take all action necessary to cause Parent's designees to be elected or appointed to the Company Board, including increasing the number of directors, and seeking and accepting resignations of incumbent directors.

At such time, the Company shall also take all actions necessary to cause individuals designated by Parent to constitute the number of members, rounded up to the next whole number, on (i) each committee of the Company Board and (ii) each board of directors of each subsidiary of the Company (and each committee thereof) that represents the same percentage as such individuals represent on the Company Board, in each case to the fullest extent permitted by law. Notwithstanding the foregoing, until Parent and/or the Purchaser acquires a majority of the Shares (assuming full conversion of the Preferred Shares into Common Shares), the Company shall (subject to the fiduciary duties of the Company Board) use its reasonable efforts to ensure that all of the members of the Company Board and such committees and boards as of the date of the Merger Agreement who are not employees of the Company shall remain members of the Company Board and such committees and boards until the Effective Time, unless otherwise replaced by Parent designees pursuant to the terms of the Merger Agreement.

Following the election or appointment of Parent's designees and until the effective time of the Merger, the approval of a majority of the directors of the Company then in office who were not designated by Parent shall be required to authorize (and such authorization shall constitute the authorization of the Company Board and no other action on the part of the Company, including any action by any other director of the Company, shall be required to authorize) any termination of the Merger Agreement by the Company, any amendment of the Merger Agreement requiring action by the Company Board, any extension of time for performance of any obligation or action under the Merger Agreement by Parent or the Purchaser and any waiver of compliance with any of the agreements or conditions contained in the Merger Agreement for the benefit of the Company.

The Merger Agreement further provides that the directors of the Purchaser immediately prior to the effective time of the Merger will be the directors of the surviving corporation in the Merger until their respective successors are duly elected and qualified.

Representations and Warranties. The Merger Agreement contains a number of representations and warranties with respect to KLA-Tencor and Therma-Wave. The representations and warranties are subject, in some cases, to specified exceptions and qualifications.

The merger agreement's reciprocal representations and warranties relate to, among other things, with respect to each of KLA-Tencor and Therma-Wave, respectively:

- due incorporation, good standing and possession of all governmental licenses, authorizations, permits, consents and approvals required to carry such organizations' respective businesses;
- corporate power and authority to enter into the Merger Agreement and to consummate the transactions contemplated by the Merger Agreement;

- the possession of any required consents or approvals of government entities necessary to consummate the transactions contemplated by the Merger Agreement;
- the absence of any violations of or conflicts with such party's organizational documents, applicable laws and certain agreements as a result of entering into the Merger Agreement and consummating the transactions contemplated by the Merger Agreement; and
- the accuracy and completeness of such party's statements in, or provided for use in, this Schedule TO, the Schedule 14D-9 filed by Therma-Wave and any proxy statement prepared in connection with the Merger, as applicable.

The Merger Agreement contains certain representations and warranties made by Therma-Wave that relate to, among other things:

- the authorization and approval of the Merger Agreement and the transactions contemplated thereby by the Company Board;
- its capitalization, including in particular the number of shares of Common Shares, Preferred Shares and stock options outstanding;
- the grant of stock options, including in particular the timing of the authorization of stock option grants by the Company;
- its subsidiaries, including the due incorporation, good standing and possession of all governmental licenses, authorizations, permits, consents and approvals of its subsidiaries;
- the accuracy of the Company's filings with the SEC and compliance with the Sarbanes-Oxley Act;
- the accuracy of the Company's financial statements and other information contained in such documents;
- the absence of certain changes or events since March 31, 2006, including
  - the conduct of the Company's business other than in the ordinary course consistent with past practice;
  - the occurrence of any material adverse effect (as defined below) on the Company;
  - the splitting, combination or reclassification or declaration, setting aside or payment of dividends, or redemption, repurchase or other acquisition or offer to redeem, repurchase, or otherwise acquire securities of the Company or its subsidiaries;
  - its acquisition of assets, securities, properties, interests or businesses;
  - the sale, lease or other transfer, or creation or incurrence of liens on, assets, securities, properties, interests or businesses of the Company or any of its subsidiaries;
  - the making of loans, advances or capital contributions to, or investments in, any other person by the Company;
  - the creation, incurrence, assumption or sufferance to exist of indebtedness by the Company;
  - any damage, destruction or other casualty loss to the Company;
  - the payment, discharge, settlement or satisfaction of any material claims, liabilities or obligations, waiver, relinquishment, release, grant, transfer or assignment any right of material value, or waiver of any material benefits, or agreement to modify in any adverse respect, or failure to enforce, or consent to any matter with respect to which the Company's consent is required under, any confidentiality, standstill or similar contract that relates to an Acquisition Proposal;
  - any change in the Company's methods of accounting, except as required by changes in U.S. Generally Accepted Accounting Principles or in Regulation S-X of the 1934 Act as agreed to by its independent public accountants; or
  - the settlement, or offer or proposal to settle, any material proceeding or other claim involving or against the Company or any of its subsidiaries, any stockholder litigation or dispute against the Company or any of its officers or directors or any proceeding or dispute that relates to the transactions contemplated by the Merger Agreement;
- the absence of undisclosed liabilities of the Company;

- the Company's compliance with applicable laws and court orders;
- the significant contractual agreements to which the Company is a party;
- the absence of finder's fees to be paid by the Company;
- the Company's intellectual property;
- certain tax matters;
- certain labor and employee benefit representations and warranties;
- certain environmental matters; and
- antitakeover statutes.

The merger agreement further contains certain representations and warranties made by KLA-Tencor that relate to, among other things:

- the fair market value of certain of the Company's assets relating to certain antitrust filings; and
- the ability of KLA-Tencor to finance the Offer and the Merger.

Reasonable Efforts. The Company and Parent have agreed to use their reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable law to consummate the transactions contemplated by the Merger Agreement, preparing and filing as promptly as practicable (and with respect to any applicable pre-merger notification requirements in Germany, within five business days of the date of the Merger Agreement, and with respect to any applicable pre-merger notification requirement in China and Taiwan, within ten business days of the date of the Merger Agreement) with any governmental authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents, and obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any governmental authority or other third party, including through communications with customers of the Company, in each case which are necessary, proper or advisable to consummate the transactions contemplated by the Merger Agreement. The Company and Parent have further agreed not take or omit to take any actions that would reasonably be likely to result in the failure or material delay to obtain and maintain such required approvals, consents and other confirmations or any of the Regulatory Conditions.

The Merger Agreement provides that the Company and Parent shall cooperate with each other in connection with the making of all such filings. In furtherance of the foregoing, Parent will make appropriate filings pursuant to applicable competition and antitrust laws with respect to the transactions contemplated by the Merger Agreement as promptly as practicable.

The Merger Agreement further provides that each of Parent and the Company shall (i) promptly notify the other party hereto of any written or oral communication to that party or its affiliates from any governmental authority, and of any proceeding of any governmental authority commenced or, to its knowledge, threatened against, relating to or involving that party or its affiliates, (ii) keep the other party reasonably informed of any substantive meeting or discussion with any governmental authority in respect of any filing, investigation or inquiry concerning the Merger Agreement or the transactions contemplated thereby, (iii) subject to all applicable privileges, including the attorney client privilege, furnish the other party with copies of all correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their affiliates and their respective representatives, on the one hand, and any governmental authority or members of their respective staffs, on the other hand, in each case referred to in the foregoing clauses (i) through (iii) concerning the Merger Agreement and the transactions contemplated thereby, and (iv) promptly notify the other party of any fact, circumstance, change or effect that could reasonably be expected to prevent Parent's ability to timely purchase all of the Company Shares pursuant to the Offer and to make the payments in respect of stock options of the Company required by the Merger Agreement.

Notwithstanding the above, Parent or any of its subsidiaries will not be required to:

- effect any divestiture of, hold separate, or restrict its ownership or operation of, any business or assets of Parent, the Company or their respective subsidiaries, or to enter into any settlement or consent decree, or agree to any undertaking, with respect to any business or assets of the Company or its subsidiaries or of Parent or its subsidiaries;

- enter into, amend or agree to enter into or amend, any contracts of Parent, the Company or their respective subsidiaries; or
- otherwise waive, abandon or alter any rights or obligations of the Company, Parent or their respective subsidiaries;

except as would not, individually or in the aggregate, materially diminish the benefits that would reasonably be expected to accrue to Parent from the Merger or the consummation of the transactions contemplated by the Merger Agreement. Parent will also not be required to file or defend any lawsuit or legal proceeding, appeal any judgment or order or contest any injunction issued in a proceeding initiated by a governmental authority.

Conduct of Business by the Company. The Merger Agreement provides that from the date of the Merger Agreement until the effective time of the Merger, the Company shall, and shall cause each of its subsidiaries to, conduct its business in the ordinary course consistent with past practice and in material compliance with all applicable laws and use reasonable efforts to:

- preserve intact its present business organization and relationships with third parties;
- maintain in effect all of its foreign, federal, state and local licenses, permits, consents, franchises, approvals and authorizations;
- keep available the services of its directors, officers and key employees; and
- maintain satisfactory relationships with its customers, lenders, suppliers and others having material business relationships with it.

The Company has further agreed that, subject to certain exceptions, unless expressly contemplated in the Merger Agreement or otherwise consented to by Parent, it will not, nor will it permit any of its subsidiaries to:

- amend its articles of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise);
- split, combine or reclassify any shares of capital stock of the Company or any of its subsidiaries or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of the capital stock of the Company or any of its subsidiaries or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any securities of the Company or its subsidiaries;
- issue, deliver, sell, pledge, encumber or dispose of, or authorize any such action with respect to any securities of the Company or its subsidiaries or amend any term of any securities of the Company or its subsidiaries (in each case, whether by merger, consolidation or otherwise);
- enter into any new material line of business or incur or commit to any capital expenditures or any obligations or liabilities in connection therewith inconsistent with the items and amounts set forth in the Company's capital expenditure budget for fiscal 2007;
- adopt a plan or agreement of, or resolutions providing for or authorizing, complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;
- acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses;
- enter into, terminate, renew, amend or modify in any material respect or fail to enforce any material contract;
- sell, lease or otherwise transfer, or create or incur any lien on, any of the Company's or its subsidiaries' assets, securities, properties, interests or businesses;
- make any loans, advances or capital contributions to, or investments in, any other person;
- create, incur, assume, suffer to exist or otherwise be liable with respect to any indebtedness of the Company or any of its subsidiaries to any person;
- pay, discharge, settle or satisfy any material claims, liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or otherwise);
- grant or increase any severance or termination pay to (or amend any existing arrangement relating to severance or termination pay with) any director, officer or employee of the Company or any of its subsidiaries;

- increase benefits payable under any existing severance or termination pay policies or employment agreements;
- enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement) with any director, officer or employee of the Company or any of its subsidiaries;
- establish, adopt or amend any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, compensation, stock option, restricted stock or other benefit plan or arrangement covering any director, officer or employee of the Company or any of its subsidiaries;
- increase compensation, bonus or other benefits payable to any director, officer or employee of the Company or any of its subsidiaries;
- transfer or exclusively license to any person or otherwise extend, amend or modify any rights to any intellectual property rights owned by the Company or its subsidiaries and material to the business of the Company or any of its subsidiaries as currently conducted;
- take any action for the purpose of preventing, delaying or impeding the consummation of the Merger or the other transactions contemplated by the Merger Agreement;
- change the Company's methods of accounting, except as required by changes in U.S. Generally Accepted Accounting Principles or in Regulation S-X of the 1934 Act, as agreed to by its independent public accountants;
- settle, or offer or propose to settle:
  - any material litigation, investigation, arbitration, proceeding or other claim involving or against the Company or any of its subsidiaries,
  - any stockholder litigation or dispute against the Company or any of its officers or directors, or
  - any proceeding or dispute that relates to the transactions contemplated by the Merger Agreement;
- make or change any tax election, change any annual tax accounting period, adopt or change any method of tax accounting, materially amend any tax returns or file claims for material tax refunds, enter into any closing agreement, settle any tax claim, audit or assessment, or surrender any right to claim a material Tax refund, offset or other reduction in tax liability;
- give to any person an indemnity in connection with any intellectual property right, other than indemnities (i) that, individually or in the aggregate, could not result in liability to the Company in excess of the amounts paid by such person to the Company or any of its subsidiaries, (ii) that arise under the standard form terms and conditions of sale of the Company or any of its subsidiaries, or (iii) that are substantially similar to the indemnities previously granted by the Company or any of its subsidiaries to such person or its affiliates; or
- agree, resolve or commit to do any of the foregoing.

Nonsolicitation Obligations. The Merger Agreement provides that the Company will, and will cause its subsidiaries to, and shall use its reasonable best efforts to cause the advisors, employees and other agents of the Company and any of its subsidiaries to, cease immediately and cause to be terminated any and all existing activities, discussions and negotiations, if any, with any third party conducted prior to the date of the Merger Agreement with respect to any Acquisition Proposal (as defined below). The Merger Agreement further provides that the Company shall use its reasonable best efforts to enforce the terms and conditions of any confidentiality agreement entered into with such third party with respect to any Acquisition Proposal and to cause any such third party (or its agents or advisors) in possession of confidential information about the Company that was furnished by or on behalf of the Company to return or destroy all such information. Pursuant to the Merger Agreement, the Company will use its reasonable best efforts to promptly inform its directors, officers, key employees, investment bankers, attorneys, accountants, consultants and other agents and advisors of its nonsolicitation obligations.

The Merger Agreement further provides that neither the Company nor any of its subsidiaries will, nor will the Company or any of its subsidiaries authorize or permit any of its or their officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors (together, "Representatives") to:

- enter into or participate in any discussions or negotiations regarding an Acquisition Proposal with, or in connection with an Acquisition Proposal furnish any nonpublic information relating to the Company or any of its subsidiaries or afford

access to the business, properties, assets, books or records of the Company or any of its subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that such person reasonably believes may be seeking to make, or has made, an Acquisition Proposal or has made any inquiry or indication of interest that could reasonably be expected to lead to an Acquisition Proposal,

- fail to make, withdraw or modify in a manner adverse to Parent the recommendation by the Company Board to the stockholders to accept the Offer (or recommend an Acquisition Proposal) (any of the foregoing in this clause, an "Adverse Recommendation Change"),
- grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of its subsidiaries,
- enter into any letter of intent, contract or similar document contemplating or otherwise relating to any Acquisition Proposal; or
- enter into or participate in any discussions or negotiations regarding any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Offer or Merger or that could reasonably be expected to dilute materially the benefits of Parent of the transactions contemplated by the Merger Agreement.

The Company shall instruct, and cause each applicable subsidiary, if any, to instruct, each such representative who has been retained or requested by the Company or any such subsidiary to perform services in connection with the Merger Agreement not to, directly or indirectly, solicit, initiate or take any action knowingly to facilitate or encourage the submission of any Acquisition Proposal.

For purposes of the Merger Agreement, "Acquisition Proposal" means, other than the transactions contemplated by the Merger Agreement, any third-party offer, proposal or inquiry relating to, or any third-party indication of interest in,

- any acquisition or purchase, direct or indirect, of 20% or more of the consolidated assets of the Company and its subsidiaries or any equity or voting securities of the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company, which equity or voting securities constitute 20% or more of the voting power of all of the equity and voting securities of the Company or such subsidiary;
- any takeover bid, tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any third party beneficially owning any equity or voting securities of the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company, which equity or voting securities constitute 20% or more of the voting power of all of the equity and voting securities of the Company or such subsidiary;
- a merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization or other similar transaction involving the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company as a result of which the holders of the Company's or such subsidiary's equity or voting securities immediately prior to such transaction will hold less than 80% of the voting power of the Company or such subsidiary (or other surviving or resulting entity, as applicable) immediately after the transaction; or
- a sale of substantially all the assets, liquidation, dissolution or other similar transaction of the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company.

For purposes of the Merger Agreement, "Superior Proposal" means any bona fide, unsolicited, written Acquisition Proposal (including for the avoidance of doubt with respect to a series of related transactions such as a tender offer followed by a merger), which did not result from a breach of the Company's nonsolicitation obligations, made by a third party that, if consummated, would result in a third party (or in the case of a direct merger between a third party or any subsidiary of such third party and the Company, the stockholder of such third party) owning, directly or indirectly, all of the outstanding Shares or all or substantially all the consolidated assets of the Company and its subsidiaries, and which Acquisition Proposal the Company Board determines in good faith by a majority vote, after considering the advice of its outside legal counsel and of a financial advisor of nationally recognized reputation and taking into account all of the terms and conditions of such Acquisition Proposal,

including any break-up fees, expense reimbursement provisions and conditions to consummation, (i) is more favorable and provides greater value to all the Company's stockholders than as provided under the Merger Agreement (including any changes to the terms of the Merger Agreement or the Offer proposed by Parent prior to the time of such determination in response to such Superior Proposal or otherwise), (ii) is not subject to any financing condition (and if financing is required, such financing is then fully committed to the third party) and (iii) is reasonably capable of being completed on the terms proposed without unreasonable delay, taking into account all financial, legal, regulatory and other aspects of such Acquisition Proposal.

Notwithstanding the foregoing, the Company Board, directly or indirectly through advisors, agents or other intermediaries, may:

- if the Company Board determines in good faith by a majority vote, after considering advice from outside legal counsel to the Company, that failure to take such actions would be inconsistent with its fiduciary duties under applicable law, (a) engage in negotiations or discussions with any third party that has made (and not withdrawn) a bona fide Acquisition Proposal in writing that the Company Board in good faith believes is or is reasonably likely to lead to a Superior Proposal, and (b) thereafter furnish to such third party information relating to the Company or any of its subsidiaries pursuant to a confidentiality agreement with terms no less favorable to the Company than those contained in the confidentiality agreement with Parent and that permit the Company to comply with the terms of its nonsolicitation obligations under the Merger Agreement (a copy of which shall be promptly (in all events within 24 hours) provided for informational purposes only to Parent);
- to the extent it determines in good faith by a majority vote, after considering advice from outside legal counsel to the Company, that it is so required by the Company Board's fiduciary duties under applicable law, make an Adverse Recommendation Change; and
- take any non-appealable, final action that any court of competent jurisdiction orders the Company to take.

For purposes of this paragraph, the term "Acquisition Proposal" shall have the meaning ascribed to such term as defined below, except that references to "20%" or "80%" in clauses (i) through (iv) of such definition shall be replaced with "50%". Nothing contained in the Merger Agreement shall prevent the Company Board from complying with Rule 14e-2(a) or 14d-9 under the 1934 Act with regard to an Acquisition Proposal.

The Company Board shall not take any of the actions referred to in the immediately preceding paragraph unless the Company shall have delivered to Parent a prior written notice advising Parent that it intends to take such action. In the case of any Adverse Recommendation Change referred to in the immediately preceding paragraph in which neither the Company nor any of its advisors has received any Acquisition Proposal, such notice shall be given to Parent at least 48 hours before taking such action.

In addition, the Company must notify Parent within 48 hours after:

- receipt of an Acquisition Proposal;
- receipt of an indication that a third party is considering making an Acquisition Proposal;
- any request for nonpublic information relating to the Company or any of its subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its subsidiaries by any third party that the Company reasonably believes may be considering making, or has made, an Acquisition Proposal; or
- any breach of the obligations of the Company and its subsidiaries of the Company's non-solicitation obligations set forth in the Merger Agreement. The Company must provide such notice orally and in writing and shall identify the material terms and conditions of any such Acquisition Proposal, indication, request or breach. The Company must keep Parent fully informed, on a reasonably current basis, of the status and details of any such Acquisition Proposal, indication or request.

The Company Board shall not make an Adverse Recommendation Change in connection with an Acquisition Proposal unless:

- the Company notifies Parent, in writing, at least three business days before making an Adverse Recommendation Change, of its intention to take such action, attaching the most current version of such proposed agreement or a detailed summary of all material terms of any such proposal and the identity of the party making such Acquisition Proposal;

- the Company shall have, during such three business day period, negotiated in good faith with Parent with respect to any changes to the Merger Agreement that Parent shall have proposed; and
- Parent does not make, within such three business day period, an offer that the Company Board determines is at least as favorable to the stockholders of the Company from a financial point of view as the competing transaction set forth in the Company's written notice.

Other Covenants of the Company. The Merger Agreement provides that the Company will take such other actions between the date of the Merger Agreement and the effective time of the Merger including:

- duly call a meeting of the stockholders of the Company to approve the Merger, if applicable, and use its best efforts to obtain the stockholders' adoption of the Merger Agreement;
- prepare and distribute to the Company's stockholders a proxy statement containing a statement by the Company Board recommending adoption of the Merger Agreement by the Company's stockholders;
- give Parent reasonable access to the offices, properties, books and records of the Company, furnish to Parent such financial and operating data and other information as may be reasonably requested and instruct the employees, counsel, financial advisors, auditors and other authorized representatives of the Company and its subsidiaries to cooperate with Parent in its investigation of the Company;
- promptly notify Parent of:
  - any notice or other communication alleging that the consent is or may be required in connection with the transactions contemplated by the Merger Agreement;
  - any notice or other communication from any governmental authority in connection with the transactions contemplated by the Merger Agreement; and
  - any proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its subsidiaries that, if pending on the date of the Merger Agreement, would have been required to have been disclosed pursuant to the representations and warranties of the Company contained in the Merger Agreement that relate to the Company's compliance with applicable law and court orders, litigation, employee benefits matters or environmental matters or that relate to the consummation of the transactions contemplated by the Merger Agreement;
  - any inaccuracy of any representation or warranty contained in the Merger Agreement at any time during the term of the Merger Agreement that could reasonably be expected to cause the related condition under "The Offer — Section 15 — Conditions to the Offer" not to be satisfied; and
  - any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under the Merger Agreement;
- take certain actions with respect to the Company's Amended and Restated 2000 Employee Stock Purchase Plan, including terminating such plan conditional on the closing of the Merger;
- terminate any and all of its 401(k) plans; and
- use its reasonable best efforts to ensure that Parent has the benefit of certain software and other intellectual property rights that the Company has licensed.

Indemnification and Insurance. The Merger Agreement provides that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the effective time of the Merger existing in favor of the current or former directors or officers of the Company and its subsidiaries (the "Indemnified Persons") as provided in their respective certificates of incorporation, bylaws or indemnification or other agreements will survive the Merger and continue in full force and effect in accordance with their terms, *provided* that such obligations shall be subject to any limitation imposed from time to time under applicable law.

Prior to the effective time of the Merger, the Company may purchase a "tail" officers' and directors' liability insurance policy, which by its terms shall survive the Merger and shall provide each Indemnified Person with coverage for six (6) years following the effective time of the Merger on terms and conditions no less favorable than the Company's existing officers' and

directors' liability insurance, *provided* that the aggregate premium for such tail policy is not greater than 350% of the annual premium paid by the Company for such existing insurance, and *provided*, *further*, that if such 350% of the annual premium paid by the Company for such existing insurance is not sufficient for such coverage, the Company may, at its option, spend up to that amount to purchase such lesser coverage as may be obtained with such amount. If the Company elects to purchase such a tail policy, it shall give notice to Parent of such election, which notice shall include the price and all other material terms of such proposed policy, and Parent shall, if Parent gives the Company notice within three business days of the receipt of such notice from the Company, purchase a tail policy (which policy shall provide each Indemnified Person with coverage for six (6) years following the effective time of the Merger on terms and conditions no less favorable than the Company's existing officers' and directors' liability insurance) in lieu of the tail policy proposed by the Company. If Parent or the Company shall purchase such a tail policy prior to the effective time of the Merger, Parent and the Surviving Corporation shall maintain such tail policy in full force and effect and continue to honor their respective obligations thereunder for the full term thereof.

Employee Benefit Plans. The Merger Agreement provides that from and after the effective time of the Merger, subject to the terms of Parent's current employee benefit plans, Parent will provide, or cause the Surviving Corporation to provide, to each employee of the Company and its subsidiaries who continues employment with Parent or the surviving corporation of the Merger after the effective time of the merger (collectively, the "Continuing Employees") employee benefits that are no less favorable than those Parent provides to its own similarly-situated employees.

To the extent permitted under Parent's employee benefit plans, Parent will further provide each Continuing Employee with credit for purposes of eligibility to participate and vesting under Parent's plans for years of prior service with the Company. To the extent permitted under Parent's employee benefit plans and subject to any third party insurer's consent, Parent will cause any and all pre-existing condition limitations, eligibility waiting periods and evidence of insurability requirements under any group health plans of Parent in which such employees and their eligible dependents will participate to be waived (to the extent not applicable under the Company's employee benefit plans) and will provide credit for any co-payments and deductibles prior to the effective time of the merger but in the plan year which includes the effective time of the Merger for purposes of satisfying any applicable deductible, out-of-pocket or similar requirements under any such plans that may apply for such plan year after the effective time of the Merger.

Termination. The Merger Agreement may be terminated and the Offer may be abandoned at any time prior to the acceptance of the Shares pursuant to the Offer:

- by mutual written agreement of the Company and Parent;
- by either the Company or Parent, if:
  - any statute, rule or regulation shall have been enacted or promulgated by any governmental authority, or any order, injunction, judgment, judicial decision, decree, ruling, or other legal restraint shall have been issued, in any case, that (i) makes acceptance for payment of, and payment for, the Shares pursuant to the Offer or consummation of the Merger illegal or otherwise prohibited or (ii) enjoins the Purchaser from accepting for payment, and paying for, the Shares pursuant to the Offer or the Company or Parent from consummating the Merger and, in respect of an order, injunction, judgment, judicial decision, decree or ruling under clause (i) or (ii) above, which shall have become final and nonappealable; or
  - the Offer has not been consummated by July 7, 2007 (the "End Date"); *provided* that the right to terminate the Merger Agreement pursuant to this clause shall not be available to any party whose breach of any provision of the Merger Agreement results in the failure of the Offer to be consummated by the End Date;
- by Parent, if:
  - there is an inaccuracy in the Company's representations and warranties in the Merger Agreement, or a breach by the Company of its covenants in the Merger Agreement, in either case such that the Purchaser's related condition to the consummation of the Offer described under "The Offer — Section 15 — Conditions to the Offer" would fail to be satisfied, and such inaccuracy or breach is not cured within 30 days after notice thereof and is not reasonably likely to be cured prior to the End Date;
  - an Adverse Recommendation Change shall have occurred or the Company shall have willfully and materially breached its obligations described below under "Acquisition Proposals"; or

- there shall have occurred any change, development or event such that the conditions set forth in clause (f) under "The Offer — Section 15 — Conditions to the Offer" would fail to be satisfied;

- by the Company, if:

  - the Company Board authorizes the Company, subject to complying with the terms of the Merger Agreement, to enter into a written agreement concerning a Superior Proposal; provided, that the Company shall have paid the Termination Fee (as defined below); and provided further, that the Company notifies Parent, in writing and at least 72 hours prior to such termination of its intention to terminate the Merger Agreement and enter into a binding written agreement concerning an Acquisition Proposal that constitutes a Superior Proposal, attaching the most current version of such agreement or a detailed summary of all material terms and conditions thereof and the identity of the party making such Superior Proposal, and Parent does not make, within three business days of receipt of such written notification, a binding offer that the Company Board determines, in good faith after considering the advice of its outside legal counsel and of a financial advisor of nationally recognized reputation, is as favorable or more favorable to the stockholders of the Company as such Superior Proposal; or

  - at any time following March 7, 2007, if any of the Regulatory Conditions (as defined in "The Offer — Section 15 — Conditions to the Offer") is not satisfied; *provided* that the Company's right to terminate the Merger Agreement pursuant to this clause shall not be available if the Company's material breach of any provision of the Merger Agreement results in the failure of the Offer to be consummated by such date.

Fees and Expenses; Termination Fee. Except as provided below, each party will bear its own expenses incurred in connection with the preparation, execution and performance of the transactions contemplated by the Merger Agreement, including, but not limited to, all fees and expenses of agents, representatives, counsel, financial advisors and accountants.

Therma-Wave has agreed to pay KLA-Tencor (by wire transfer of immediately available funds) a fee of $3.69 million (the "Termination Fee") if the Merger Agreement is terminated:

- by either party if the Offer has not been consummated by the End Date and each of the Regulatory Conditions has been satisfied;

- by Parent, if there is an inaccuracy in the Company's representations and warranties or a breach by the Company of its covenants in the Merger Agreement, in either case such that the related condition to consummation of the Offer described under "The Offer — Section 15 — Conditions to the Offer" would fail to be satisfied, and such inaccuracy or breach is not cured within 30 days after notice thereof and is not reasonably likely to be cured prior to the End Date;

- by the Company, if at any time following March 7, 2007, if any of the Regulatory Conditions is not satisfied; *provided* that the Company's right to terminate the Merger Agreement pursuant to this clause shall not be available if the Company's material breach of any provision of the Merger Agreement results in the failure of the Offer to be consummated by such date;

- by Parent, if an Adverse Recommendation Change shall have occurred or the Company shall have willfully and materially breached its obligations described below under "Acquisition Proposals"; or

- by the Company, if the Company Board authorizes the Company, subject to complying with the terms of the Merger Agreement, to enter into a written agreement concerning a Superior Proposal;

provided, that in the event of a termination under the first three bullets above, the Termination Fee shall be paid only if (A) at the time of such termination an Acquisition Proposal (other than any nonpublic inquiry) has been received by the Company or an Acquisition Proposal has been publicly announced and such proposal has not been withdrawn and (B) within 12 months following the date of such termination, the Company enters into an agreement contemplating, or consummates, a transaction in which (1) the Company merges with or into, or is acquired, directly or indirectly, by merger or otherwise by, a Third Party as a result of which the holders of the Company's equity securities immediately prior to the consummation of such transaction shall hold less than 50% of the voting power of the Company (or other surviving or resulting entity) following the transaction; (2) a Third Party, directly or indirectly, acquires more than 50% of the total assets of the Company and its subsidiaries, taken as a whole; (3) a Third Party, directly or indirectly, acquires more than 50% of the outstanding Company Shares; or (4) the Company adopts or implements a plan of liquidation, recapitalization or share repurchase relating to more than 50% of the outstanding Company Shares.

In the event that Parent or the Company terminates the Merger Agreement because the Offer has not been consummated by the End Date and the sole reason that the transaction has not been consummated by the End Date (but without regard to the satisfaction of the Minimum Tender Condition or the delivery of the certificates of the Company described in clauses (f) and (g) set forth under "The Offer — Section 15 — Conditions to the Offer") is that one or more of the Regulatory Conditions has not been satisfied, Parent shall pay to the Company (by wire transfer of immediately available funds), within two Business Days following such termination, a fee of $2.21 million.

Tender and Support Agreement. The following is a summary of the Tender and Support Agreement, a form of which is filed as Exhibit (d)(2) to the Schedule TO referred to in Section 18, and is incorporated herein by reference. The summary is qualified in its entirety by reference to the Tender and Support Agreement.

Concurrently with entering into the Merger Agreement, Parent and Purchaser entered into a Tender and Support Agreement dated January 7, 2007 (the "Tender and Support Agreement") with Larry Tomlinson, Leonard Baker, John D'Errico, Gregory Graves, Nam Suh, John Willinge, Peter Hanley, David Aspnes, Papken Der Torossian, Boris Lipkin, Joe Passarello, Brian Renner, Jon Opsal, John Mathews, Raul Tan, Noel Simmons and Lena Nicolaides, who are all of the directors and executive officers of the Company, and Deephaven Capital Management, LLC and North Run Advisors, LLC, who are the holders of the Preferred Shares (collectively, the "Supporting Stockholders"). Collectively, the Supporting Stockholders directly own 4,550,717 Common Shares (excluding the shares issuable upon exercise of outstanding options) and 10,400 Preferred Shares (or approximately 6,709,677 Common Shares after full conversion of the Preferred Shares), representing approximately 25% of the Company's issued and outstanding Common Shares (assuming full conversion of the Preferred Shares) as of January 7, 2007.

Pursuant to the Tender and Support Agreement, each of the Supporting Stockholders has agreed to tender all of the Shares beneficially owned by the Supporting Stockholder (the "Subject Shares") in the Offer. Pursuant to the Tender and Support Agreement, promptly, but in any event no later than three business days after such Supporting Stockholder has received all documents or instruments required to be delivered pursuant to the terms of the Offer, each Supporting Stockholder will (i) deliver to the Depositary (A) a letter of transmittal with respect to his or her Subject Shares complying with the terms of the Offer, (B) a certificate or certificates representing such Subject Shares or an "agent's message" (or such other evidence, if any, of transfer as the Depositary may reasonably request) in the case of a book-entry transfer of any uncertificated Subject Shares and (C) all other documents or instruments required to be delivered pursuant to the terms of the Offer, and/or (ii) instruct his or her broker or such other person that is the holder of record of any Subject Shares beneficially owned by such Support Stockholder to tender such Subject Shares pursuant to and in accordance with the terms of the Offer.

Each Supporting Stockholder has agreed that once his or her Subject Shares are tendered by him or her, such Stockholder will not withdraw any of such Subject Shares from the Offer, unless and until (i) the Offer shall have been terminated by the Purchaser in accordance with the terms of the Merger Agreement, or (ii) the Tender and Support Agreement shall have been terminated in accordance with its terms.

The Tender and Support Agreement also provides that if any Subject Shares have not been previously accepted for payment and paid for by the Purchaser pursuant to the Offer, the each Supporting Stockholder agrees to vote, or cause his or her Subject Shares to be voted, in favor of the Merger and against (A) any agreement or arrangement related to any Acquisition Proposal, (B) any liquidation, dissolution, recapitalization, extraordinary dividend or other significant corporate reorganization of the Company or any of its subsidiaries or (C) any other transaction the consummation of which would reasonably be expected to impede, interfere with, prevent or materially delay the Offer or the Merger or that would reasonably be expected to dilute materially the benefits to Parent of the transactions contemplated by the Merger Agreement and (i) in favor of any other matter necessary for consummation of the transactions contemplated by the Merger Agreement, which is considered at any such meeting of stockholders, and in connection therewith to execute any documents reasonably requested by Parent which are necessary or appropriate in order to effectuate the foregoing. Each Supporting Stockholder also agreed that he or she will not: (a) transfer or consent to or permit any such transfer of, any or all of its Subject Shares, or any interest therein, or create or permit to exist any lien, other than any restrictions imposed by applicable law or pursuant to the Tender and Support Agreement, on any such Subject Shares, (b) enter into any contract with respect to any transfer of such Subject Shares or any interest therein, (c) grant or permit the grant of any proxy, power of attorney or other authorization in or with respect to such Subject Shares, (d) deposit or permit the deposit of such Subject Shares into a voting trust or enter into a voting agreement or arrangement with respect to such Subject Shares or (e) take or permit any other action that would in any way restrict, limit or interfere with the

performance of its obligations under the Tender and Support Agreement or the transactions contemplated thereby or otherwise make any representation or warranty of each Supporting Stockholder therein untrue or incorrect.

Each holder of Preferred Shares has also agreed either to sell its warrants to purchase Common Shares to Parent or to submit such warrants to the Company for redemption, at the election of Parent, after the Expiration Date. In either case, each such holder will receive an amount of cash equal to what such holder would have received had such holder elected to convert its warrants immediately prior to the consummation of the Offer.

The Tender and Support Agreement will terminate upon the earlier of (i) the termination of the Merger Agreement in accordance with its terms and (ii) the effective time of the Merger. Any holder of the Preferred Shares shall have the right to terminate the Tender and Support Agreement immediately following (A) any change in the nature of the consideration payable in the Offer or the Merger, (B) any decrease in consideration payable in the Offer or the Merger, (C) any increase in the consideration payable to holders of Subject Shares that is not made equally available to holders of the Preferred Shares (on an as-converted basis), (D) any waiver of the Minimum Condition by each of the Company and Parent or (E) the date that is 9 months after the date of the Tender and Support Agreement.

Mutual Nondisclosure Agreement. The following is a summary of the Amended and Restated Nondisclosure Agreement, a form of which is filed as Exhibit (d)(3) to the Schedule TO referred to in Section 18, and is incorporated herein by reference. The summary is qualified in its entirety by reference to the Amended and Restated Nondisclosure Agreement.

On April 27, 2006, the Company and Parent entered into a mutual nondisclosure agreement (the "Nondisclosure Agreement"). Each party agreed that any information furnished to it would be kept confidential for a period of five years from the date of disclosure, and would be used only for the purpose of evaluating a possible transaction. Each party also agreed, among other things, to restrict access of all confidential information received from the other party to only those employees and consultants of the receiving party who need to be informed of such confidential information for the purpose of evaluating a possible transaction between the parties, and only if such employees and consultants sign agreements of confidentiality that contain substantially the same obligations contained in the Nondisclosure Agreement.

On May 15, 2006, the Company and Parent amended and restated the Nondisclosure Agreement (the "Amended and Restated Nondisclosure Agreement"). In addition to the terms agreed upon by the parties as described above, each party agreed, among other things, that, without the prior written consent of the board of directors of the other party, it would not, and would cause its directors, officers, employees, agents, advisors and affiliates not to, (i) directly or indirectly, acquire or offer to acquire in any manner, any voting securities, direct or indirect rights to acquire any voting securities, or assets, of the other party, (ii) directly or indirectly participate in any solicitation of proxies to vote the other party's voting securities, (iii) make any public announcement with respect to, or submit a proposal for, or offer of, certain transactions involving the other party or any of such other party's securities or assets, (iv) participate in a "group" as defined in Section 13(d)(3) of the Exchange Act in connection with any of the foregoing actions described in items (i) through (iii) above, (v) act or seek to influence in any manner the management, board of directors or the policies of the other party, (vi) take any action that could reasonably be expected to require the other party to make a public announcement regarding the possibility of any of the events described in items (i) through (v) above, or (vii) request to amend or waive the paragraph in the Amended and Restated Nondisclosure Agreement setting forth items (i) through (vii) above, until the earlier of one year from the date of the Amended and Restated Nondisclosure Agreement, or the occurrence of certain events described in the Amended and Restated Nondisclosure Agreement. Subject to specified exceptions, for a period of one year from the date of the Amended and Restated Nondisclosure Agreement, each party agreed not to solicit for employment any employee of the other party that has been introduced by such party in connection with the potential transaction contemplated by the Amended and Restated Nondisclosure Agreement.

14. Dividends and Distributions.

As discussed in Section 13, pursuant to the Merger Agreement, without the prior approval of Parent or as otherwise contemplated in the Merger Agreement, the Company has agreed not (i) issue, deliver, sell, pledge, encumber or dispose of, or authorize any such action with respect to any shares of any securities of the Company or its subsidiaries, other than the issuance of (a) any Common Shares upon the exercise of Company stock options that are outstanding on the date of the Merger Agreement in accordance with the terms of those options on the date of the Merger Agreement, (b) any Company Shares pursuant to the ESPP, (c) any Common Shares upon the conversion of Preferred Shares or exercise of warrants to purchase Company Shares in accordance with their terms and the terms of the Tender and Support Agreement or (d) any securities of the

subsidiaries of the Company to the Company or any other subsidiary or (ii) amend any term of any security of the Company or its subsidiaries (in each case, whether by merger, consolidation or otherwise).

The Company has further agreed not to split, combine or reclassify any shares of capital stock of the Company or its subsidiaries or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of the capital stock of the Company or its subsidiaries (other than dividends by any of the Company's wholly owned subsidiaries to the Company or another wholly-owned subsidiary), or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any securities of the Company or its subsidiaries.

15. Conditions of the Offer.

Notwithstanding any other term of the Offer, subject to the terms and conditions of the Merger Agreement, the Purchaser shall not be required to accept for payment or pay for any Shares, and may terminate the Offer, if at the expiration of the Offer, (1) the Minimum Condition shall not have been satisfied or (2) any of the following conditions shall not have been satisfied and such non-satisfaction shall be continuing:

(a) *Applicable Competition Law.* Any waiting period under the Hart-Scott Rodino Act (the "HSR Act") and any other applicable law analogous to the HSR Act or otherwise regulating antitrust, competition or merger control matters in one or more foreign jurisdictions that is required in connection with the Offer shall have expired or have been terminated.

(b) *Governmental Approval.* Parent, the Company and the Purchaser and their respective subsidiaries shall have timely obtained from each governmental authority all material approvals, waivers and consents, if any, necessary for consummation of or in connection with the Merger and the other transactions contemplated by the Merger Agreement.

(c) *No Injunctions or Restraints; Illegality.* No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition prohibiting the consummation of the Offer or the Merger shall be in effect; nor shall any applicable law be enacted, entered or enforced which prohibits the consummation of the Offer or the Merger.

(d) *No Governmental Proceedings.* No suit, claim, action, litigation, proceeding or hearing brought by any Governmental Authority shall be pending (i) challenging or seeking to make illegal, to delay materially or otherwise to restrain or prohibit the consummation of the Offer or the Merger, (ii) seeking to restrain or prohibit Parent's or the Purchaser's ownership or operation (or that of their respective subsidiaries or affiliates) of all or any material portion of the business or assets of the Company and its subsidiaries, taken as a whole, or of Parent and its subsidiaries, taken as a whole, or to compel Parent or any of its subsidiaries or affiliates to dispose of or hold separate all or any material portion of the business or assets of the Company and its subsidiaries, taken as a whole, or of Parent and its subsidiaries, taken as a whole.

(e) *Material Adverse Effect.* No change shall have occurred since the date of the Agreement that has a Material Adverse Effect.

(f) *Representations and Warranties.* The representations of the Company relating to corporate authorization, the capitalization of the Company (other than with respect to certain representations related to the grant and number of outstanding stock options and ownership of securities of the Company by its subsidiaries), finder's fees and the absence of antitakeover statutes shall in each case be true and correct (other than in *de minimis* respects) as of the date of the Merger Agreement and as of the expiration of the Offer as though made as of the expiration of the Offer, except (i) to the extent such representations and warranties are expressly made only as of an earlier date, in which case as of such earlier date. All other representations and warranties of the Company shall in each case be true and correct as of the date of the Merger Agreement and as of the expiration of the Offer as though made as of the expiration of the Offer, except to the extent any such other Company representations and warranties are expressly made only as of an earlier date, in which case as of such earlier date; *provided* that, if any of such other Company representations and warranties shall not be true and correct (for this purpose disregarding any qualification or limitation as to materiality or Material Adverse Effect), then the condition stated in this clause shall be deemed satisfied if and only if the cumulative effect of all inaccuracies of such representations and warranties (for this purpose disregarding any qualification or limitation as to materiality or Material Adverse Effect) do not have a Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to the foregoing effect.

(g) *Preferred Shares.* All of the issued and outstanding Preferred Shares shall have been validly tendered in accordance with the terms of the Offer, prior to the scheduled expiration date of the Offer (as it may be extended pursuant to the Merger Agreement) and not withdrawn.

(h) *Performance of Covenants and Obligations of the Company.* The Company shall have performed in all material respects its covenants and obligations required to be performed by it under the Merger Agreement at or prior to the expiration of the Offer, and Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to such effect.

(i) *Definitive Agreement.* The Agreement shall be in full force and effect and shall not have been terminated.

The foregoing conditions are for the sole benefit of Parent and the Purchaser and, subject to the terms and conditions of the Merger Agreement, may be waived by Parent or the Purchaser, in whole or in part at any time and from time to time in the sole discretion of Parent or the Purchaser. The failure by Parent or the Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

The term "Material Adverse Effect" means any fact, circumstance, change or effect that, individually or when taken together with all other such facts, circumstances, changes or effects that exist at the date of determination, has or is reasonably likely to have a material adverse effect on (i) the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole, or (ii) (to the extent applicable) the Company's ability to timely consummate the Merger and the other transactions contemplated by the Merger Agreement in accordance with the terms of the Merger Agreement, excluding, in the case of clause (i) above, any such effect resulting from or arising out of: (A) any loss of or adverse change in the relationship of the Company and its subsidiaries with their respective employees, customers, partners or suppliers arising out of or related to the announcement, pendency or consummation of the Offer or the Merger, (B) general economic, market or political conditions (including acts of terrorism or war or other force majeure events) that do not disproportionately affect the Company and its subsidiaries, taken as a whole, (C) general conditions in the industry in which the Company and its subsidiaries operate that do not disproportionately affect the Company and its subsidiaries, taken as a whole, (D) any changes (after the date of this Agreement) in U.S. Generally Accepted Accounting Principles or applicable law, (E) any failure to take any action as a result of compliance with the restrictions or other prohibitions set forth in the second sentence of "Section 13 — The Merger Agreement — Conduct of Business by the Company," (F) any failure of the Company to meet internal or analysts' expectations or projections (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred) or (G) any proceeding made or brought by any holder of Shares (on the holder's own behalf or on behalf of the Company) arising out of or related to the Merger Agreement or any of the transactions contemplated hereby (including the Offer and the Merger).

16. Certain Legal Matters; Regulatory Approvals.

General. Based on our examination of publicly available information filed by the Company with the SEC and other publicly available information concerning the Company, we are not aware of any governmental license or regulatory permit that appears to be material to the Company's business that might be adversely affected by our acquisition of Shares pursuant to the Offer or, except as set forth below, of any approval or other action by any government or governmental administrative or regulatory authority or agency, domestic or foreign, that would be required for our acquisition or ownership of Shares pursuant to the Offer. Should any such approval or other action be required or desirable, we currently contemplate that, except as described below under "State Takeover Statutes", such approval or other action will be sought. Except as described below under "Antitrust", there is, however, no current intent to delay the purchase of Shares tendered pursuant to the Offer pending the outcome of any such matter. There can be no assurance that any such approval or other action, if needed, would be obtained (with or without substantial conditions) or that if such approvals were not obtained or such other actions were not taken adverse consequences might not result to the Company's business or certain parts of the Company's business might not have to be disposed of, any of which could cause us to elect to terminate the Offer without the purchase of Shares thereunder. Our obligation under the Offer to accept for payment and pay for Shares is subject to the conditions set forth in "The Offer — Section 15."

State Takeover Statutes. As a Delaware corporation, the Company is subject to Section 203 of the DGCL. In general, Section 203 of the DGCL would prevent an "interested stockholder" (generally defined in Section 203 of the DGCL as a person

beneficially owning 15% or more of a corporation's voting stock) from engaging in a "business combination" (as defined in Section 203 of the DGCL) with a Delaware corporation for three years following the time such person became an interested stockholder unless: (i) before such person became an interested stockholder, the board of directors of the corporation approved the transaction in which the interested stockholder became an interested stockholder or approved the business combination; (ii) upon consummation of the transaction which resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding for purposes of determining the number of shares of outstanding stock held by directors who are also officers and by employee stock plans that do not allow plan participants to determine confidentially whether to tender shares); or (iii) following the transaction in which such person became an interested stockholder, the business combination is (A) approved by the board of directors of the corporation and (B) authorized at a meeting of stockholders by the affirmative vote of the holders of at least 66 2/3% of the outstanding voting stock of the corporation not owned by the interested stockholder. In accordance with the provisions of Section 203, the Company Board has approved the Merger Agreement and the transactions contemplated thereby and, therefore, the restrictions of Section 203 are inapplicable to the Merger and the transactions contemplated under the Merger Agreement.

A number of other states have adopted laws and regulations applicable to attempts to acquire securities of corporations which are incorporated, or have substantial assets, stockholders, principal executive offices or principal places of business or whose business operations otherwise have substantial economic effects in such states. If any government official or third party seeks to apply any state takeover law to the Offer or the Merger, we will take such action as then appears desirable, which action may include challenging the applicability or validity of such statute in appropriate court proceedings. If it is asserted that one or more state takeover statutes is applicable to the Offer or any such merger or other business combination and an appropriate court does not determine that it is inapplicable or invalid as applied to the Offer the Merger, we might be required to file certain information with, or to receive approvals from, the relevant state authorities or holders of Shares, and we may be unable to accept for payment or pay for Shares tendered pursuant to the Offer, or be delayed in continuing or consummating the Offer the Merger. In such case, we may not be obligated to accept for payment or pay for any tendered Shares. See "The Offer — Section 15."

Antitrust in the United States. Under the HSR Act and the rules that have been promulgated thereunder by the Federal Trade Commission (the "FTC"), certain acquisition transactions may not be consummated unless certain information has been furnished to the Antitrust Division of the Department of Justice (the "Antitrust Division") and the FTC and certain waiting period requirements have been satisfied. Based upon the calculation of the value of the Company's assets as determined under the HSR Act, we believe that the transaction is exempt from the HSR Act's notice requirements and such information is not required to be delivered to the Antitrust Division. Should any such notice or other action be required, we currently contemplate that such approval or other action will be sought.

Antitrust in Germany. Under the provisions of the German Act against Restraints on Competition ("ARC"), the acquisition of Shares pursuant to the Offer may be consummated if the acquisition is approved by the German Federal Cartel Office ("FCO"), either by written approval or by expiration of a one month waiting period commenced by the filing by Parent of a complete notification (the "German Notification") with respect to the Offer, unless the FCO notifies Parent within the one month waiting period of the initiation of an in-depth investigation. Parent filed the German Notification on January 12, 2007. If the FCO initiates an in-depth investigation, the acquisition of Shares under the Offer may be consummated if the acquisition is approved by the FCO, either by written approval or by expiration of a four month waiting period commenced by the filing of the German Notification, unless the FCO notifies Parent within the four month waiting period that the acquisition satisfies the conditions for a prohibition and may not be consummated. The written approval by the FCO or the expiration of any applicable waiting period is a condition to the Purchaser's obligation to accept for payment and pay for Shares tendered pursuant to the Offer.

The Merger will not require an additional filing under the ARC if the Purchaser owns 50% or more of the outstanding shares at the time of the Merger and if the Merger occurs after the acquisition of shares under the Offer is approved by the FCO, either by written approval or by expiration of any applicable waiting period.

Antitrust in Taiwan. Under Taiwan's Fair Trade Law ("FTL"), the acquisition of Shares pursuant to the Offer may be consummated if the acquisition is approved by the Taiwan Fair Trade Commission ("TFTC"), either by written approval or the expiration of a 30 day waiting period commenced by the filing by Parent of a complete notification (the "Taiwan Notification") with respect to the Offer, unless the TFTC notifies Parent within the 30 day waiting period of the extension of the review period

for a second 30-day period (for a total of 60 days) for an in-depth investigation. Parent anticipates that it will file the Taiwan Notification on or prior to January 22, 2007. If the TFTC initiates an in-depth investigation, the acquisition of Shares under the Offer may be consummated if the acquisition is approved in writing by the TFTC, unless the TFTC notifies Parent that the acquisition satisfies the conditions for a prohibition and may not be consummated. The written approval by the TFTC or the expiration of any applicable waiting period is a condition of the Purchaser's obligation to accept for payment and pay for Shares tendered pursuant to the Offer.

Antitrust in the People's Republic of China. Under the provisions of the PRC's Regulations on the Acquisition of Domestic Enterprises by Foreign Investors (the "M&A Regulations"), the acquisition of Shares pursuant to the Offer may be consummated, provided that the acquisition is approved by the Chinese merger control authorities, ie. the Ministry of Commerce of the People's Republic of China ("MOFCOM") and the State Administration for Industry and Commerce of the People's Republic of China ("SAIC"). Pursuant to guidelines issued in 2006 by MOFCOM, merger control submission is deemed to be approved if no hearing is convened and Parent has not received further notification from MOFCOM within 30 working days of the date that the Chinese Notification is filed. Parent anticipates that it will file the notification report ("Chinese Notification") with MOFCOM and SAIC on or prior to January 22, 2007. If a hearing is convened, MOFCOM and SAIC may exercise their discretion to extend the waiting period to conduct second-phase investigations. If a second-phase investigation is initiated, the acquisition of Shares under the Offer may be consummated if the acquisition is approved, unless MOFCOM and SAIC notify Parent that the acquisition satisfies the conditions for a prohibition and may not be consummated. The written approval by MOFCOM and SAIC or the expiration of any applicable waiting period is a condition of the Purchaser's obligation to accept for payment and pay for Shares tendered pursuant to the Offer.

Antitrust in Israel. The Restrictive Trade Practices Law 5748-1988 and the regulations promulgated thereunder require the filing of a notice of merger with the Restrictive Trade Practices Commissioner where the applicable criteria are met. Within thirty days of receiving such notice of merger from the parties to the merger, the Restrictive Trade Practices Commissioner will notify the parties that it (i) objects to the merger, (ii) consents to the merger, subject to certain conditions, or (iii) will require additional information or an extension of time to properly review the transactions. The consent of the Restrictive Trade Commissioner must be received prior to closing the merger. KLA-Tencor and Therma-Wave intend to file the notice of merger as soon as reasonably practicable.

Other Foreign Competition Law Filings. Based upon our examination of publicly available information concerning the Company, it appears that the Company and its subsidiaries conduct business in a number of foreign countries. In connection with the acquisition of Shares pursuant to the Offer, the laws of certain of these foreign countries may require the filing of information with, or the obtaining of the approval of, governmental authorities therein. After commencement of the Offer, we will seek further information regarding the applicability of any such laws and currently intend to take such action as they may require, but no assurance can be given that such approvals will be obtained. If any action is taken before completion of the Offer by any such government or governmental authority, we may not be obligated to accept for payment or pay for any tendered Shares. See "The Offer — Section 15."

Other Regulatory Matters. Any merger or other similar business combination that we propose would also have to comply with any applicable U.S. Federal law. In particular, unless the Shares were deregistered under the 1934 Act prior to such transaction, if such merger or other business combination were consummated more than one year after termination of the Offer or did not provide for stockholders to receive cash for their Shares in an amount at least equal to the price paid in the Offer, we may be required to comply with Rule 13e-3 under the 1934 Act. If applicable, Rule 13e-3 would require, among other things, that certain financial information concerning the Company and certain information relating to the fairness of the proposed transaction and the consideration offered to minority stockholders in such a transaction be filed with the SEC and distributed to such stockholders prior to consummation of the transaction.

17. Fees and Expenses.

We have retained D.F. King & Co., Inc. to act as the information agent and Computershare Shareholder Services, Inc. to act as the depositary in connection with the Offer and the Merger. The Information Agent may contact holders of Shares by mail, telephone, telex, telegraph and personal interviews and may request brokers, dealers, banks, trust companies and other nominees to forward materials relating to the Offer to beneficial owners. The Information Agent and the Depositary each will receive reasonable and customary compensation for their respective services, will be reimbursed for certain reasonable out-of-pocket

expenses and will be indemnified against certain liabilities in connection therewith, including certain liabilities under the U.S. Federal securities laws.

We will not pay any fees or commissions to any broker or dealer or any other person (other than the Information Agent and the Depositary) for soliciting tenders of Shares pursuant to the Offer. Brokers, dealers, banks, trust companies and other nominees will, upon request, be reimbursed by us for reasonable and necessary costs and expenses incurred by them in forwarding materials to their customers.

18. Miscellaneous.

The Offer is not being made to, nor will tenders be accepted from or on behalf of, holders of Shares in any jurisdiction in which the making of the Offer or acceptance thereof would not be in compliance with the laws of such jurisdiction. However, we may, in our sole discretion, take such action as we may deem necessary to make the Offer in any such jurisdiction and extend the Offer to holders of Shares in such jurisdiction.

No person has been authorized to give any information or make any representation on behalf of Parent or the Purchaser not contained in this Offer to Purchase or in the Letter of Transmittal and, if given or made, such information or representation must not be relied upon as having been authorized.

We have filed with the SEC a Tender Offer Statement on Schedule TO, together with exhibits, pursuant to Rule 14d-3 under the 1934 Act, furnishing certain additional information with respect to the Offer. The Schedule TO and any amendments thereto, including exhibits, may be examined and copies may be obtained from the offices of the SEC in the manner described in "The Offer — Section 9" of this Offer to Purchase.

FENWAY ACQUISITION CORPORATION

January 18, 2007

ANNEX I

DIRECTORS AND EXECUTIVE OFFICERS OF PARENT AND THE PURCHASER

DIRECTORS AND EXECUTIVE OFFICERS OF PARENT

The name, current principal occupation or employment and material occupations, positions, offices or employment for the past five years of each director and executive officer of Parent are set forth below. The business address of each director and officer is KLA-Tencor, One Technology Drive, San Jose, California 95035. Unless otherwise indicated, each occupation set forth opposite an individual's name refers to employment currently with Parent.

None of Parent or the directors and officers of Parent listed below has, during the past five years, (i) been convicted in a criminal proceeding or (ii) been a party to any judicial or administrative proceeding that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, U.S. federal or state securities laws, or a finding of any violation of U.S. federal or state securities laws. All directors and officers listed below are citizens of the United States.

Name	Principal Occupation and Material Employment During the Past Five Years	Age
Edward W. Barnholt **Director**	Edward W. Barnholt has been a Director of KLA-Tencor since 1995, and was named Chairman of the Board in October 2006. From March 1999 to March 2005, Mr. Barnholt was President and Chief Executive Officer of Agilent Technologies, Inc. ("Agilent") and from November 2002 to March 2005, he was Chairman of the Board. On March 1, 2005, Mr. Barnholt retired as the Chairman, President and Chief Executive Officer of Agilent. Before being named Agilent's Chief Executive Officer, Mr. Barnholt served as Executive Vice President and General Manager of Hewlett-Packard Company's Measurement Organization from 1998 to 1999. From 1990 to 1998, he served as General Manager of Hewlett-Packard Company's Test and Measurement Organization. He was elected Senior Vice President of Hewlett-Packard Company in 1993 and Executive Vice President in 1996. Mr. Barnholt also serves on the boards of directors of eBay, the Tech Museum of Innovation and the Silicon Valley Leadership Group, Adobe and the Packard Foundation.	63
H. Raymond Bingham **Director**	H. Raymond Bingham has been a Director of KLA-Tencor since October 1999. He served as President and Chief Executive Officer of Cadence Design Systems, Inc. ("Cadence") from April 1999 to April 2004. Mr. Bingham was the Executive Chairman of the board of directors of Cadence from May 2004 to July 2005 and was a director of Cadence from November 1997 to July 2005. From 1993 to April 1999, Mr. Bingham served as Executive Vice President and Chief Financial Officer of Cadence. Prior to joining Cadence, Mr. Bingham was Executive Vice President and Chief Financial Officer of Red Lion Hotels, Inc. for eight years. Mr. Bingham also serves on the board of directors of Oracle Corporation.	60
Robert T. Bond **Director**	Robert T. Bond has been a Director of KLA-Tencor since August 2000. From April 1996 to January 1998, Mr. Bond served as Chief Operating Officer of Rational Software Corporation. Prior to that, he held various executive positions at Rational Software Corporation. Mr. Bond was employed by Hewlett-Packard Company from 1967 to 1983 and held various management positions during his tenure there. Mr. Bond also serves on the board of directors of MontaVista Software.	63

Name	Principal Occupation and Material Employment During the Past Five Years	Age
Lawrence A. Gross **Executive Officer**	Lawrence A. Gross was elected Executive Vice President-Legal and Interim General Counsel of KLA-Tencor Corporation in October 2006. Mr. Gross joined the Company in September 2006 in an interim role to assist with the stock option investigation and related matters and with managing the Company's legal function. From 1986 to March 2006, Mr. Gross was the chief counsel of SunGard Data Systems Inc., a global provider of software and processing solutions headquartered in Wayne, Pennsylvania. From 2005 to 2006, Mr. Gross was SunGard's Senior Vice President — Chief Administrative Officer and Chief Legal Officer, and from 1986 to 2004, Mr. Gross was SunGard's General Counsel and Vice President or Senior Vice President. Before joining SunGard, Mr. Gross was a corporate attorney at Blank Rome LLP, a full-service law firm based in Philadelphia. Mr. Gross is a 1979 magna cum laude graduate of the University of Michigan Law School and also holds bachelor's and master's degrees from the University of Michigan.	54
Jeffrey L. Hall **Executive Officer**	A seven-year veteran of KLA-Tencor, with 17 years of experience in both corporate finance and operations, Jeffrey Hall was appointed Chief Financial Officer (CFO) on January 5, 2006. Prior to this, he served as the vice president of finance, tax and treasury, where he focused on enhancing the Company's operational performance and spearheaded major cost-saving efforts. Mr. Hall began his career at KLA-Tencor in January 2000 in charge of mergers and acquisitions before moving to the office of vice president finance and accounting. Before joining KLA-Tencor, Mr. Hall was CFO of Sonoma Spa Resorts. He also held financial positions at Walt Disney World, AT&T and NCR. Mr. Hall earned his bachelor's degree in finance from Indiana University and his master's degree in business administration from the University of Dayton.	41
Stephen P. Kaufman **Director**	Stephen P. Kaufman has been a Director of KLA-Tencor since November 2002. He has been a Senior Lecturer at the Harvard Business School since January 2001. He was a member of the board of directors of Arrow Electronics, Inc. ("Arrow") from 1984 to May 2003. From 1986 to June 2000, he was Chief Executive Officer of Arrow. From 1985 to June 1999, he was also Arrow's President. From 1994 to June 2002, he was Chairman of the Board of Arrow. Mr. Kaufman also serves on the board of directors of Harris Corporation.	64
John H. Kispert **Executive Officer**	John H. Kispert has been President and Chief Operating Officer since January 2006. Prior to that, he served as Chief Financial Officer and Executive Vice President of the Company since July 2000. From July 1999 to July 2000, Mr. Kispert was Vice President of Finance and Accounting. From February 1998 to July 1999, he was Vice President of Operations for the Wafer Inspection Group. Mr. Kispert joined KLA-Tencor in February 1995 and has held a series of other management positions within the Company. He currently serves on the board of directors of North American SEMI, an industry trade association.	43
Jorge Titinger **Executive Officer**	Jorge Titinger is the Executive Vice President and Chief Administrative Officer at KLA-Tencor Corporation; responsible for Information Technology, Corporate Learning & Development, Facilities and the Company's globalization initiative. Mr. Titinger joined KLA-Tencor in December of 2002 as the Vice President and General Manager of the Texas Instruments Strategic Business Unit and the Central U.S. Business Unit. Mr. Titinger then became the Vice President and general manager of the Global Customer Operations group. Prior to his current assignment, he was the Senior Vice President and general manager of the Global Support Services group. Prior to joining KLA-Tencor, Mr. Titinger has held executive positions at Applied Materials, Insync, Silicon Graphics and Hewlett Packard. Mr. Titinger holds a Bachelor's Degree in Electrical Engineering, a Master's Degree in Electrical Engineering, and a Master's Degree in Engineering Management and Business, all from Stanford University.	45

Name	Principal Occupation and Material Employment During the Past Five Years	Age
Ben Tsai **Executive Officer**	Ben Tsai rejoined KLA-Tencor in 2006 as the Company's Chief Technology Officer. Before returning to KLA-Tencor, Ben held the position of Senior Vice President, Technology at Tokyo Electron Limited. Previously, Dr. Tsai spent 20 years at KLA-Tencor in various positions including Group Vice President, Chief Technology Officer of Systems where he was responsible for some of the Company's key technology alliances for optics and sensors. He was also General Manager of the WIN division. Prior to the KLA-Tencor merger, Dr. Tsai held numerous positions with increasing responsibility at KLA Instruments including Chief Technology Officer and several executive positions in the Wafer Inspection division. Dr. Tsai holds over twenty patents in the areas of inspection and metrology. He received his bachelor's degree in electrical engineering from the National Taiwan University and a master's degree and PhD in electrical engineering from the University of Illinois at Urbana-Champaign.	48
Lida Urbanek **Director**	Lida Urbanek has been a Director of KLA-Tencor since April 30, 1997. She is a private investor. She was a director of Tencor Instruments from August 1991 until April 30, 1997.	63
Richard P. Wallace **Director and** **Executive Officer**	Rick Wallace was appointed chief executive officer of KLA-Tencor Corporation on January 1, 2006. Mr. Wallace brings 18 years of experience at KLA-Tencor to his current role, and has held a variety of senior management positions at KLA-Tencor. These include president and chief operating officer, executive vice president, overseeing the company's Reticle and Photomask Inspection Division, Films and Surface Technology Division, CTO Software and Customer Groups, and executive vice president of KLA-Tencor's Wafer Inspection Group. He also served at KLA-Tencor as group vice president for the Lithography Control Group, as well as vice president/general manager and vice president of marketing for the Wafer Inspection Division. He joined KLA-Tencor in 1988 as an applications engineer. Earlier in his career, Rick built his expertise in lithography and yield management through engineering positions with Ultratech Stepper and Cypress Semiconductor. He earned his bachelor's degree in electrical engineering from the University of Michigan and his master's degree in engineering management from Santa Clara University, where he also taught strategic marketing and global competitiveness courses upon his graduation.	46
David C. Wang **Director**	David C. Wang has been a Director of KLA-Tencor since May 2006. Mr. Wang has served as President, China for Boeing Co. since 2002. Prior to joining Boeing, he spent 22 years at General Electric where he worked in various capacities, including most recently as chairman and CEO of GE China. In addition, Wang served in executive positions in Singapore, Malaysia and Mexico. Prior to joining GE, Mr. Wang held various engineering positions at Emerson Electric. Wang is also a director of Linktone, Ltd. Mr. Wang currently resides in Beijing and also serves on the Beijing International MBA Program Advisory Board at Beijing University and the Western Academy of Beijing Education Foundation.	62

DIRECTORS AND EXECUTIVE OFFICERS OF THE PURCHASER

The name, current principal occupation or employment and material occupations, positions, offices or employment for the past five years of each director and executive officer of the Purchaser are set forth below. The business address of each director and officer is in care of KLA-Tencor Corporation, One Technology Drive, San Jose, California 95035. Unless otherwise indicated, each occupation set forth opposite an individual's name refers to employment with the Purchaser. None of the Purchaser or the directors and officers of the Purchaser listed below has, during the past five years, (i) been convicted in a criminal proceeding or (ii) been a party to any judicial or administrative proceeding that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, U.S. federal or state securities laws, or a finding of any violation of U.S. federal or state securities laws. All directors and officers listed below are citizens of the United States.

Name	Principal Occupation and Material Employment During the Past Five Years	Age
Jeffrey L. Hall **Director and President**	Jeffrey L. Hall is Chief Financial Officer of KLA-Tencor Corporation, a position he has held since January 2006. Prior to January 2006, he served as the vice president of finance, tax and treasury at KLA-Tencor, where he focused on enhancing the Company's operational performance and spearheaded major cost-saving efforts. Mr. Hall began his career at KLA-Tencor in January 2000 in charge of mergers and acquisitions before moving to the office of vice president finance and accounting. Before joining KLA-Tencor, Mr. Hall was CFO of Sonoma Spa Resorts. He also held financial positions at Walt Disney World, AT&T and NCR. Mr. Hall earned his bachelor's degree in finance from Indiana University and his master's degree in business administration from the University of Dayton.	41
Laurence Wagner **Director and Vice President**	Laurence Wagner is Senior Vice President, Business Development of KLA-Tencor Corporation, a position he has held since November 2006. From August 2004 to November 2006, Mr. Wagner served as Senior Vice President, Strategic Business Development at KLA-Tencor. From June 2003 to August 2004, he was a principal of Excellerant Group, an M&A boutique. From May 2001 to June 2003, he was corporate Vice President and President, Microlithography Division of FSI International, a leading supplier of semiconductor process equipment. From October 1999 to February 2001, he was Senior Vice President and President, Advanced Bonding Systems Group. From 1998 to 1999, Mr. Wagner was Senior Vice President, Packaging Materials Group at Kulicke and Soffa Industries, a leading supplier of semiconductor packaging equipment and materials. From 1996 to 1998 he was Vice President, Electronic Materials at EMCORE Corporation. Mr. Wagner currently serves on the Board of Directors of Surfect Holdings Inc (SUFH) and Applied Photonics, Inc.	46

The Letter of Transmittal and certificates for Shares and any other required documents should be sent to the Depositary at one of the addresses set forth below:

The Depositary for the Offer is:

Computershare Shareholder Services, Inc.

By Mail:
Computershare Trust Company, N.A.
Therma-Wave, Inc.
P.O. Box 43011
Providence, RI 02940-3011
Attn: Corporate Actions Department

By Overnight Mail:
Computershare Trust Company, N.A.
Therma-Wave, Inc.
250 Royall Street
Canton, MA 02021
Attn: Corporate Actions Department

If you have questions or need additional copies of this Offer to Purchase or the Letter of Transmittal, you can call the Information Agent at the addresses and telephone numbers set forth below. You may also contact your broker, dealer, bank, trust company or other nominee for assistance concerning the Offer.

The Information Agent for the Offer is:

D.F. King & Co., Inc.
48 Wall Street
New York, New York 10005

Banks and Brokers call:

(212) 269-5550 (collect)

All others call toll free:

(800) 431-9633

Exhibit (a)(1)(ii)

LETTER OF TRANSMITTAL

To Tender Shares of Common Stock
and
Shares of Series B Convertible Preferred Stock
of
Therma-Wave, Inc.
Pursuant to the Offer to Purchase
dated January 18, 2007
of
Fenway Acquisition Corporation
a wholly-owned subsidiary of
Kla-Tencor Corporation

THE OFFER AND WITHDRAWAL RIGHTS EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, FEBRUARY 14, 2007, UNLESS THE OFFER IS EXTENDED.

The Depositary for the Offer is:
COMPUTERSHARE SHAREHOLDER SERVICES, INC.

By Mail:
Computershare Trust Company, N.A
Therma-Wave, Inc.
P.O. Box 43011
Providence, RI 02940-3011
Attn: Corporate Actions Department

By Overnight Mail:
Computershare Trust Company, N.A.
Therma-Wave, Inc.
250 Royall Street
Canton, MA 02021
Attn: Corporate Actions Department

ALL QUESTIONS REGARDING THE OFFER SHOULD BE DIRECTED TO THE INFORMATION AGENT, D.F. KING & CO., INC., AT THE ADDRESS AND TELEPHONE NUMBERS AS SET FORTH ON THE BACK COVER PAGE OF THE OFFER TO PURCHASE. DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE FOR THE DEPOSITARY WILL NOT CONSTITUTE A VALID DELIVERY.

WHEN TENDERING YOU MUST SEND ALL PAGES OF THIS LETTER OF TRANSMITTAL. THIS LETTER OF TRANSMITTAL AND THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL SHOULD BE READ CAREFULLY BEFORE THIS LETTER OF TRANSMITTAL IS COMPLETED.

DESCRIPTION OF SHARES TENDERED			
Name(s) & Address(es) of Registered Holder(s) (Please fill in, if blank, exactly as name(s) appear(s) on Share certificate(s))	**Shares Tendered (Attach additional list if necessary)**		
	Certificate Number(s)*	**Total Number of Shares Represented by Certificate(s)***	**Number of Shares Tendered****
	Total Shares		

* Need not be completed by stockholders tendering by book-entry transfer.
** Unless otherwise indicated, it will be assumed that all Shares represented by any certificates delivered to the Depositary are being tendered. See Instruction 4.

This Letter of Transmittal is to be used if certificates are to be forwarded herewith or, unless an Agent's Message (as defined in the Offer to Purchase) is utilized, if delivery of Shares (as defined below) is to be made by book-entry transfer to the Depositary's account at The Depository Trust Company, the Book-Entry Transfer Facility, pursuant to the procedures set forth in Section 3 of the Offer to Purchase.

Holders of outstanding shares of common stock, par value $0.01 per share ("Common Shares"), and outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares," and together with Common Shares, "Shares"), of Therma-Wave, Inc., whose certificates for such Shares are not immediately available or who cannot deliver such certificates and all other required documents to the Depositary on or prior to the expiration of the Offer, or who cannot complete the procedure for book-entry transfer on a timely basis, must tender their Shares according to the guaranteed delivery procedure set forth in Section 3 of the Offer to Purchase. See Instruction 2. Delivery of documents to the Book-Entry Transfer Facility does not constitute delivery to the Depositary.

NOTE: SIGNATURES MUST BE PROVIDED BELOW
PLEASE READ ACCOMPANYING INSTRUCTIONS CAREFULLY

☐ CHECK HERE IF SHARE CERTIFICATES HAVE BEEN MUTILATED, LOST, STOLEN OR DESTROYED, SEE INSTRUCTION 9.

☐ CHECK HERE IF TENDERED SHARES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER TO THE DEPOSITARY'S ACCOUNT AT THE BOOK-ENTRY TRANSFER FACILITY AND COMPLETE THE FOLLOWING:
Name of Tendering Institution_____
Account Number_____
Transaction Code Number_____

☐ CHECK HERE IF TENDERED SHARES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE DEPOSITARY AND COMPLETE THE FOLLOWING:
Name(s) of Tendering Stockholder(s)_____
Date of Execution of Notice of Guaranteed Delivery_____
Name of Institution which Guaranteed Delivery_____
If delivery is by book-entry transfer:
Name of Tendering Institution_____
Account Number_____
Transaction Code Number_____

Ladies and Gentlemen:

The undersigned hereby tenders to Fenway Acquisition Corporation, a Delaware corporation (the "Purchaser") and a wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation ("Parent"), the above-described shares of common stock, par value $0.01 per share ("Common Shares"), and/or shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares," and together with Common Shares, "Shares"), of Therma-Wave, Inc., a Delaware corporation (the "Company"), pursuant to the Purchaser's offer to purchase all the outstanding Common Shares of the Company at $1.65 per Common Share, net to the seller in cash without interest, less any required withholding taxes, and all the outstanding Preferred Shares of the Company at $1.65 per Common Share into which each Preferred Share is convertible at the time of the consummation of the Offer (as defined below), net to the seller in cash without interest, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 18, 2007, receipt of which is hereby acknowledged, and in this Letter of Transmittal (which, together as amended from time to time, constitute the "Offer"). The Offer expires at 12:00 Midnight, New York City time, on Wednesday, February 14, 2007, unless extended as described in the Offer to Purchase (as extended, the "Expiration Date"). The Purchaser reserves the right to transfer or assign, in whole or from time to time in part, to one or more of its affiliates the right to purchase Shares tendered pursuant to the Offer, but any such transfer or assignment will not relieve us of our obligations under the Offer or prejudice your rights to receive payment for Shares validly tendered and accepted for payment.

Upon the terms and subject to the conditions of the Offer and effective upon acceptance for payment of and payment for the Shares tendered herewith, the undersigned hereby sells, assigns and transfers to, or upon the order of, the Purchaser all right, title and interest in and to all the Shares that are being tendered hereby (and any and all other Shares or other securities issued or issuable in respect thereof on or after January 7, 2007) and appoints the Depositary the true and lawful agent and attorney-in-fact of the undersigned with respect to such Shares (and all such other Shares or securities), with full power of substitution (such power of attorney being deemed to be an irrevocable power coupled with an interest), to (i) deliver certificates for such Shares (and all such other Shares or securities), or transfer ownership of such Shares (and all such other Shares or securities) on the account books maintained by The Depository Trust Company (the "Book-Entry Transfer Facility"), together, in any such case, with all accompanying evidences of transfer and authenticity, to or upon the order of the Purchaser, (ii) present such Shares (and all such other Shares or securities) for transfer on the books of the Company and (iii) receive all benefits and otherwise exercise all rights of beneficial ownership of such Shares (and all such other Shares or securities), all in accordance with the terms of the Offer.

The undersigned hereby irrevocably appoints the Board of Directors of the Purchaser, or any of them, the attorneys and proxies of the undersigned, each with full power of substitution, to exercise all voting and other rights of the undersigned in such manner as each such attorney and proxy or his substitute shall in his sole discretion deem proper, with respect to all of the Shares tendered hereby which have been accepted for payment by the Purchaser prior to the time of any vote or other action (and any and all other Shares or other securities issued or issuable in respect thereof on or after January 7, 2007), at any meeting of stockholders of the Company (whether annual or special and whether or not an adjourned meeting), or otherwise. This proxy is irrevocable and is granted in consideration of, and is effective upon, the acceptance for payment of such Shares by the Purchaser in accordance with the terms of the Offer. Such acceptance for payment shall revoke any other proxy granted by the undersigned at any time with respect to such Shares (and all such other Shares or securities), and no subsequent proxies will be given by the undersigned (and if given, will not be deemed to be effective).

The undersigned hereby represents and warrants that the undersigned has full power and authority to tender, sell, assign and transfer the Shares tendered herein (and any and all other Shares or other securities issued or issuable in respect thereof on or after January 7, 2007) and that when the same are accepted for payment by the Purchaser, the Purchaser will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims. The undersigned will, upon request, execute and deliver any additional documents deemed by the Depositary or the Purchaser to be necessary or desirable to complete the sale, assignment and transfer of the Shares tendered hereby (and all such other Shares or securities).

All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned. Except as stated in the Offer, this tender is irrevocable.

The undersigned understands that tenders of Shares pursuant to any one of the procedures described in Section 3 of the Offer to Purchase and in the instructions hereto will constitute an agreement between the undersigned and the Purchaser upon the terms and subject to the conditions of the Offer.

Unless otherwise indicated under "Special Payment Instructions," please issue the check for the purchase price of any Shares purchased, and return any Shares not tendered or not purchased, in the name(s) of the undersigned (and, in the case of Shares tendered by book-entry transfer, by credit to the account at the Book-Entry Transfer Facility). Similarly, unless otherwise indicated under "Special Delivery Instructions," please mail the check for the purchase price of any Shares purchased and any certificates for Shares not tendered or not purchased (and accompanying documents, as appropriate) to the undersigned at the address shown below the undersigned's signature(s). In the event that both "Special Payment Instructions" and "Special Delivery Instructions" are completed, please issue the check for the purchase price of any Shares purchased and return any Shares not tendered or not purchased in the name(s) of, and mail said check and any certificates to, the person(s) so indicated. The undersigned recognizes that the Purchaser has no obligation, pursuant to the "Special Payment Instructions," to transfer any Shares from the name of the registered holder(s) thereof if the Purchaser does not accept for payment any of the Shares so tendered.

SPECIAL PAYMENT INSTRUCTIONS
(See Instructions 6, 7 and 8)

To be completed ONLY if the check for the purchase price of Shares purchased (less the amount of any federal income and backup withholding tax required to be withheld) or certificates for Shares not tendered or not purchased are to be issued in the name of someone other than the undersigned.

Issue ☐ check ☐ certificates to:

Name _____
(Please Print)

Address: _____

_____

_____
(Zip Code)

_____
Taxpayer Identification Number

SPECIAL DELIVERY INSTRUCTIONS
(See Instructions 6, 7 and 8)

To be completed ONLY if the check for the purchase price of Shares purchased (less the amount of any federal income and backup withholding tax required to be withheld) or certificates for Shares not tendered or not purchased are to be mailed to someone other than the undersigned or to the undersigned at an address other than that shown below the undersigned's signature(s).

Mail ☐ check ☐ certificates to:

Name _____
(Please Print)

Address _____

_____

_____
(Zip Code))

SIGN HERE
(Please complete Substitute Form W-9 below)

_____

_____

Signature(s) of Stockholder(s)

Dated _____, 2007

Name(s) _____

_____

(Please Print)

Capacity (full title) _____

Address _____

_____

_____

(Zip Code)

Area Code and Telephone Number _____

(Must be signed by registered holder(s) exactly as name(s) appear(s) on stock certificate(s) or on a security position listing or by person(s) authorized to become registered holder(s) by certificates and documents transmitted herewith. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth full title and see Instruction 5.)

Guarantee of Signature(s)
(If required; see Instructions 1 and 5)
(For use by Eligible Institutions only.
Place medallion guarantee in space below)

Name of Firm _____

Address _____

_____

_____

(Zip Code)

Authorized Signature _____

Name _____

(Please Print)

Area Code and Telephone Number _____

Dated _____, 2007

SUBSTITUTE FORM W-9 Department of the Treasury Internal Revenue Service Payer's Request for Taxpayer Identification No.	Part I Taxpayer Identification No. — For All Accounts	Part II For Payees Exempt From Backup Withholding (see enclosed *Guidelines*)
	Enter your taxpayer identification number in the appropriate box. For most individuals and sole proprietors, this is your social security number. For other entities, it is your employer identification number. If you do not have a number, see "How to Obtain a TIN" in the enclosed *Guidelines*. Note: If the account is in more than one name, see the chart in the enclosed *Guidelines* to determine what number to enter.	☐ *Social Security Number* **OR** ☐ *Employee Identification Number*	

Part III Certification — Under penalties of perjury, I certify that:

(1) The number shown on this form is my correct taxpayer identification number or I am waiting for a number to be issued to me;

(2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service ("IRS") that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

(3) I am a U.S. person (including a U.S. resident alien).

Certification Instructions — You must cross out item (2) above if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item (2) does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.

SIGNATURE _____ **DATE** _____**, 2007**

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING TAX BEING WITHHELD ON ANY PAYMENTS MADE TO YOU PURSUANT TO THE OFFER. PLEASE REVIEW ENCLOSED *GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9* FOR ADDITIONAL DETAILS.

INSTRUCTIONS

Forming Part of the Terms and Conditions of the Offer

1. *Guarantee of Signatures.* Except as otherwise provided below, all signatures on this Letter of Transmittal must be guaranteed by a financial institution (including most banks, savings and loan associations and brokerage houses) that is a member of a recognized Medallion Program approved by The Securities Transfer Association, Inc., including the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchange Medallion Program (SEMP) and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) or any other "eligible guarantor institution" (as such term is defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended) (each an "Eligible Institution"). Signatures on this Letter of Transmittal need not be guaranteed (i) if this Letter of Transmittal is signed by the registered holder(s) of the Shares (which term, for purposes of this document, shall include any participant in the Book-Entry Transfer Facility whose name appears on a security position listing as the owner of Shares) tendered herewith and such holder(s) has not completed the box entitled "Special Payment Instructions" on this Letter of Transmittal or (ii) if such Shares are tendered for the account of an Eligible Institution. See Instruction 5.

2. *Delivery of Letter of Transmittal and Shares.* This Letter of Transmittal is to be used either if certificates are to be forwarded herewith or, unless an Agent's Message is utilized, if delivery of Shares is to be made by book-entry transfer pursuant to the procedures set forth in Section 3 of the Offer to Purchase. Certificates for all physically delivered Shares, or a confirmation of a book-entry transfer into the Depositary's account at the Book-Entry Transfer Facility of all Shares delivered electronically, as well as a properly completed and duly executed Letter of Transmittal (or, in the case of a book-entry transfer, an Agent's Message) and any other documents required by this Letter of Transmittal, must be received by the Depositary at one of its addresses set forth on the front page of this Letter of Transmittal by the Expiration Date. Stockholders who cannot deliver their Shares and all other required documents to the Depositary by the Expiration Date must tender their Shares pursuant to the guaranteed delivery procedure set forth in Section 3 of the Offer to Purchase. Pursuant to such procedure: (i) such tender must be made by or through an Eligible Institution, (ii) a properly completed and duly executed Notice of Guaranteed Delivery substantially in the form provided by the Purchaser must be received by the Depositary by the Expiration Date and (iii) the certificates for all physically delivered Shares, or a confirmation of a book-entry transfer into the Depositary's account at the Book-Entry Transfer Facility of all Shares delivered electronically, as well as a properly completed and duly executed Letter of Transmittal (or, in the case of a book-entry delivery, an Agent's Message) and any other documents required by this Letter of Transmittal, must be received by the Depositary within three Nasdaq Global Market trading days after the date of execution of such Notice of Guaranteed Delivery, all as provided in Section 3 of the Offer to Purchase.

The method of delivery of Shares and all other required documents, including through the Book-Entry Transfer Facility, is at the option and risk of the tendering stockholder. If certificates for Shares are sent by mail, registered mail with return receipt requested, properly insured, is recommended.

No alternative, conditional or contingent tenders will be accepted, and no fractional shares will be purchased. By executing this Letter of Transmittal, the tendering stockholder waives any right to receive any notice of the acceptance for payment of the Shares.

3. *Inadequate Space.* If the space provided herein is inadequate, the certificate numbers and/or the number of Shares should be listed on a separate schedule attached hereto.

4. *Partial Tenders (not applicable to stockholders who tender by book-entry transfer).* If fewer than all the Shares represented by any certificate delivered to the Depositary are to be tendered, fill in the number of Shares which are to be tendered in the box entitled "Number of Shares Tendered." In such case, a new certificate for the remainder of the Shares represented by the old certificate will be issued and sent to the person(s) signing this Letter of Transmittal, unless otherwise provided in the boxes entitled "Special Payment Instructions" or "Special Delivery Instructions," as the case may be, on this Letter of Transmittal, as promptly as practicable following the expiration or termination of the Offer. All Shares represented by certificates delivered to the Depositary will be deemed to have been tendered unless otherwise indicated.

5. *Signatures on Letter of Transmittal; Stock Powers and Endorsements.* If this Letter of Transmittal is signed by the registered holder(s) of the Shares tendered hereby, the signature(s) must correspond with the name(s) as written on the face of the certificates without alteration, enlargement or any change whatsoever.

If any of the Shares tendered hereby is held of record by two or more persons, all such persons must sign this Letter of Transmittal.

If any of the Shares tendered hereby are registered in different names on different certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of certificates.

If this Letter of Transmittal is signed by the registered holder(s) of the Shares tendered hereby, no endorsements of certificates or separate stock powers are required unless payment of the purchase price is to be made, or Shares not tendered or not purchased are to be returned, in the name of any person other than the registered holder(s). Signatures on any such certificates or stock powers must be guaranteed by an Eligible Institution.

If this Letter of Transmittal is signed by a person other than the registered holder(s) of the Shares tendered hereby, certificates must be endorsed or accompanied by appropriate stock powers, in either case, signed exactly as the name(s) of the registered holder(s) appear(s) on the certificates for such Shares. Signature(s) on any such certificates or stock powers must be guaranteed by an Eligible Institution.

If this Letter of Transmittal or any certificate or stock power is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence satisfactory to the Purchaser of the authority of such person so to act must be submitted.

6. *Stock Transfer Taxes.* The Purchaser will pay any stock transfer taxes with respect to the sale and transfer of any Shares to it or its order pursuant to the Offer. If, however, payment of the purchase price is to be made to, or Shares not tendered or not purchased are to be returned in the name of, any person other than the registered holder(s), or if a transfer tax is imposed for any reason other than the sale or transfer of Shares to the Purchaser pursuant to the Offer, then the amount of any stock transfer taxes (whether imposed on the registered holder(s), such other person or otherwise) will be deducted from the purchase price unless satisfactory evidence of the payment of such taxes, or exemption therefrom, is submitted herewith.

7. *Special Payment and Delivery Instructions.* If the check for the purchase price of any Shares purchased is to be issued, or any Shares not tendered or not purchased are to be returned, in the name of a person other than the person(s) signing this Letter of Transmittal or if the check or any certificates for Shares not tendered or not purchased are to be mailed to someone other than the person(s) signing this Letter of Transmittal or to the person(s) signing this Letter of Transmittal at an address other than that shown above, the appropriate boxes on this Letter of Transmittal should be completed. Stockholders tendering Shares by book-entry transfer may request that Shares not purchased be credited to such account at the Book-Entry Transfer Facility as such stockholder may designate under "Special Payment Instructions". If no such instructions are given, any such Shares not purchased will be returned by crediting the account at the Book-Entry Transfer Facility designated above.

8. *Substitute Form W-9.* Under the U.S. federal income tax laws, the Depositary will be required to withhold 28% (or such other rate specified by the Internal Revenue Code of 1986, as amended) of the amount of any payments made to certain stockholders pursuant to the Offer. In order to avoid such backup withholding, each tendering stockholder, and, if applicable, each other payee, must provide the Depositary with such stockholder's or payee's correct taxpayer identification number and certify that such stockholder or payee is not subject to such backup withholding by completing the Substitute Form W-9 set forth above. In general, if a stockholder or payee is an individual, the taxpayer identification number is the social security number of such individual. If the Depositary is not provided with the correct taxpayer identification number, the stockholder or payee may be subject to a $50 penalty imposed by the Internal Revenue Service. Certain stockholders or payees (including, among others, all corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements. In order to satisfy the Depositary that a foreign individual qualifies as an exempt recipient, such stockholder or payee must submit a Form W-8BEN Certificate of Foreign Status (or other applicable Form W-8) to the Depositary. Such certificates can be obtained from the Depositary. For further information concerning backup withholding and instructions for completing the Substitute Form W-9 (including how to obtain a taxpayer identification number if you do not have one and how to complete the Substitute Form W-9 if Shares are held in more than one name), consult the enclosed *Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*

Failure to complete the Substitute Form W-9 will not, by itself, cause Shares to be deemed invalidly tendered, but may require the Depositary to withhold 28% (or such other rate specified by the Internal Revenue Code of 1986, as amended) of the amount of any payments made pursuant to the Offer. Backup withholding is not an additional federal income tax. Rather, the federal income tax liability of a person subject to backup withholding will be reduced by the amount of tax withheld. If

withholding results in an overpayment of taxes, a refund may be obtained provided that the required information is furnished to the Internal Revenue Service. **Failure to complete and return the Substitute Form W-9 may result in backup withholding of 28% (or such other rate specified by the Internal Revenue Code of 1986, as amended) of any payments made to you pursuant to the Offer. Please review the enclosed *Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9* for additional details.**

9. *Mutilated, Lost, Stolen or Destroyed Certificates.* If the certificate(s) representing Shares to be tendered have been mutilated, lost, stolen or destroyed, stockholders should (i) complete this Letter of Transmittal and check the appropriate box above and (ii) contact the Depositary immediately by calling (781) 575-2879. The Depositary will provide such holder with all necessary forms and instructions to replace any such mutilated, lost, stolen or destroyed certificates. The stockholder may be required to give Purchaser a bond as indemnity against any claim that may be made against it with respect to the certificate(s) alleged to have been mutilated, lost, stolen or destroyed.

10. *Requests for Assistance or Additional Copies.* Requests for assistance or additional copies of the Offer to Purchase and this Letter of Transmittal may be obtained from the Information Agent at the address or telephone numbers set forth below.

The Information Agent for the Offer is:

D.F. King & Co., Inc.
48 Wall Street
New York, New York 10005

Banks and Brokers call: (212) 269-5550 (collect)

All others call toll free: (800) 431-9633

NOTICE OF GUARANTEED DELIVERY
To Tender Shares of Common Stock
and
Shares of Series B Convertible Preferred Stock
of
THERMA-WAVE, INC.
Pursuant to the Offer to Purchase
dated January 18, 2007
of
FENWAY ACQUISITION CORPORATION
a wholly-owned subsidiary of
KLA-TENCOR CORPORATION

This form, or a substantially equivalent form, must be used to accept the Offer (as defined below) if the certificates for shares of common stock, par value $0.01 per share, or the certificates for shares of Series B Convertible Preferred Stock, par value $0.01 per share, of Therma-Wave, Inc. and any other documents required by the Letter of Transmittal cannot be delivered to the Depositary by the expiration of the Offer. Such form may be delivered by hand, or transmitted by telegram, telex facsimile transmission, or mail to the Depositary. See Section 3 of the Offer to Purchase.

The Depositary for the Offer is:

Computershare Shareholder Services, Inc.

By Mail:
Computershare Trust Company, N.A.
Therma-Wave, Inc.
P.O. Box 43011
Providence, RI 02940-3011
Attn: Corporate Actions Department

By Overnight Mail:
Computershare Trust Company, N.A.
Therma-Wave, Inc.
250 Royall Street
Canton, MA 02021
Attn: Corporate Actions Department

By Facsimile:
(617) 360-6810

Confirm Facsimile Transmission:
(By Telephone Only) (781) 575-2332

DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE, OR TRANSMISSION OF INSTRUCTIONS VIA A FACSIMILE NUMBER OTHER THAN AS SET FORTH ABOVE, WILL NOT CONSTITUTE A VALID DELIVERY.

This Notice of Guaranteed Delivery is not to be used to guarantee signatures. If a signature on a Letter of Transmittal is required to be guaranteed by an Eligible Institution under the instructions thereto, such signature guarantee must appear in the applicable space provided in the signature box on the Letter of Transmittal.

☐ **CHECK HERE IF SHARE CERTIFICATES HAVE BEEN MUTILATED, LOST, STOLEN OR DESTROYED. SEE INSTRUCTION 9 OF THE LETTER OF TRANSMITTAL.**

Ladies and Gentlemen:

The undersigned hereby tenders to Fenway Acquisition Corp., a Delaware corporation (the "Purchaser") and a wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation ("Parent"), upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 18, 2007 and the related Letter of Transmittal (which, together with any amendments and supplements thereto, collectively constitute the "Offer"), receipt of which is hereby acknowledged, shares of common stock, par value $0.01 per share, and shares of Series B Convertible Preferred Stock, par value $0.01 per share, of Therma-Wave, Inc., a Delaware corporation, pursuant to the guaranteed delivery procedure set forth in Section 3 of the Offer to Purchase.

Certificate Numbers (if available)

SIGN HERE

Signature(s)

(Name(s)) (Please Print)

(Addresses)

(Zip Code)

If delivery will be by book-entry transfer:

Name of Tendering Institution

(Area Code and Telephone Number)

Account Number

GUARANTEE
(Not to be used for signature guarantee)

The undersigned, a firm which is a bank, broker, dealer, credit union, savings association or other entity which is a member in good standing of a recognized Medallion Program approved by the Securities Transfer Association Inc., including the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchange Medallion Program (SEMP) and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) or any other "eligible guarantor institution" (as such term is defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended), guarantees (i) that the above named person(s) "own(s)" the Shares tendered hereby within the meaning of Rule 14e-4 under the Securities Exchange Act of 1934, (ii) that such tender of Shares complies with Rule 14e-4 and (iii) to deliver to the Depositary the Shares tendered hereby, together with a properly completed and duly executed Letter(s) of Transmittal (or facsimile(s) thereof) and certificates for the Shares to be tendered or an Agent's Message (as defined in the Offer to Purchase) in the case of a book-entry delivery, and any other required documents, all within three Nasdaq Global Market trading days of the date hereof.

(Name of Firm)

(Authorized signature)

(Address)

(Name)

(Zip Code)

(Area Code and Telephone Number)

Dated , 2007.

Exhibit (a)(1)(iv)

OFFER TO PURCHASE FOR CASH
All Outstanding Shares of Common Stock
and
All Outstanding Shares of Series B Convertible Preferred Stock
of
THERMA-WAVE, INC.
at
$1.65 Net Per Share of Common Stock
and
$1.65 Net Per Share of Common Stock into which each Share of Series B Convertible Preferred Stock is Convertible at the time of the Consummation of the Offer
by
FENWAY ACQUISITION CORPORATION
a wholly-owned subsidiary of
KLA-TENCOR CORPORATION

January 18, 2007

To Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees:

Fenway Acquisition Corporation, a Delaware corporation (the "Purchaser") and a wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation ("Parent"), is making an offer to purchase all the outstanding shares of common stock, par value $0.01 per share ("Common Shares"), of Therma-Wave, Inc., a Delaware corporation (the "Company"), at $1.65 per Common Share, net to the seller in cash without interest, less any required withholding taxes, and all the outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares", and together with Common Shares, "Shares"), of the Company at $1.65 per Common Share into which each Preferred Share is convertible at the time of the consummation of the Offer (as defined below), net to the seller in cash without interest, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Purchaser's Offer to Purchase, dated January 18, 2007, and the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the "Offer").

For your information and for forwarding to your clients for whom you hold Shares registered in your name or in the name of your nominee, we are enclosing the following documents:

1. **Offer to Purchase**, dated January 18, 2007;

2. **Letter of Transmittal**, including a Substitute Form W-9, for your use and for the information of your clients;

3. **Notice of Guaranteed Delivery** to be used to accept the Offer if the Shares and all other required documents cannot be delivered to Computershare Shareholder Services, Inc., the Depositary for the Offer, by the expiration of the Offer;

4. A **form of letter which may be sent to your clients** for whose accounts you hold Shares registered in your name or in the name of your nominee, with space provided for obtaining such clients' instructions with regard to the Offer;

5. A **letter to stockholders of the Company** from Boris Lipkin, President and Chief Executive Officer of the Company, together with a Solicitation/Recommendation Statement on Schedule 14D-9, dated January 18, 2007, which has been filed with the Securities and Exchange Commission and includes the recommendation of the Board of Directors of the Company that stockholders accept the Offer and tender their Shares pursuant to the Offer;

6. **Guidelines for Certification of Taxpayer Identification Number** on Substitute Form W-9 providing information relating to backup federal income tax withholding; and

7. **Return envelope** addressed to the Depositary.

WE URGE YOU TO CONTACT YOUR CLIENTS AS PROMPTLY AS POSSIBLE.

THE OFFER AND WITHDRAWAL RIGHTS EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, FEBRUARY 14, 2007, UNLESS THE OFFER IS EXTENDED.

The Purchaser will not pay any fees or commissions to any broker, dealer or other person (other than the Information Agent or the Depositary as described in the Offer to Purchase) for soliciting tenders of Shares pursuant to the Offer. The Purchaser will, however, upon request, reimburse brokers, dealers, banks and trust companies for reasonable and necessary costs and expenses incurred by them in forwarding materials to their customers. The Purchaser will pay all stock transfer taxes applicable to its purchase of Shares pursuant to the Offer, subject to Instruction 6 of the Letter of Transmittal.

In order to accept the Offer a duly executed and properly completed Letter of Transmittal and any required signature guarantees, or an Agent's Message (as defined in the Offer to Purchase) in connection with a book-entry delivery of Shares, and any other required documents, should be sent to the Depositary by 12:00 Midnight, New York City time, on Wednesday, February 14, 2007.

Any inquiries you may have with respect to the Offer should be addressed to, and additional copies of the enclosed materials may be obtained from the Information Agent at the addresses and telephone numbers set forth on the back cover of the Offer to Purchase.

Very truly yours,

D.F. King & Co., Inc.

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU THE AGENT OF FENWAY ACQUISITION CORPORATION, KLA-TENCOR CORPORATION, THE INFORMATION AGENT OR THE DEPOSITARY, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENT ON BEHALF OF ANY OF THEM IN CONNECTION WITH THE OFFER OTHER THAN THE DOCUMENTS ENCLOSED HEREWITH AND THE STATEMENTS CONTAINED THEREIN.

OFFER TO PURCHASE FOR CASH
All Outstanding Shares of Common Stock
and
All Outstanding Shares of Series B Convertible Preferred Stock
of
THERMA-WAVE, INC.
at
$1.65 Net Per Share of Common Stock
and
$1.65 Net Per Share of Common Stock into which each Share of Series B Convertible Preferred Stock is Convertible at the time of the Consummation of the Offer
by
FENWAY ACQUISITION CORPORATION
a wholly-owned subsidiary of
KLA-TENCOR CORPORATION

January 18, 2007

To Our Clients:

Enclosed for your consideration are the Offer to Purchase dated January 18, 2007 and the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the "Offer") in connection with the offer by Fenway Acquisition Corp., a Delaware corporation (the "Purchaser") and a wholly-owned subsidiary of KLA-Tencor Corporation, a Delaware corporation ("Parent"), to purchase for cash all outstanding shares of common stock, par value $0.01 per share ("Common Shares"), and all outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares", and together with Common Shares, "Shares") of Therma-Wave, Inc., a Delaware corporation (the "Company"). We are the holder of record of Shares held for your account. A tender of such Shares can be made only by us as the holder of record and pursuant to your instructions. The Letter of Transmittal is furnished to you for your information only and cannot be used by you to tender Shares held by us for your account.

We request instructions as to whether you wish us to tender any or all of the Shares held by us for your account, upon the terms and subject to the conditions set forth in the Offer to Purchase and the Letter of Transmittal.

Your attention is directed to the following:

1. The tender price is $1.65 per Common Share, net to you in cash without interest, less any required withholding taxes, and $1.65 per Common Share into which each Preferred Share is convertible at the time of the consummation of the Offer, net to you in cash without interest, less any required withholding taxes.
2. The Offer and withdrawal rights expire at 12:00 Midnight, New York City time, on February 14, 2007, unless extended (as extended, the "Expiration Date").
3. The Offer is conditioned upon, among other things, (1) there being validly tendered in accordance with the terms of the Offer, prior to the expiration of the Offer, and not withdrawn, Shares of the Company, that, together with any Shares then owned by Parent and its subsidiaries (including the Purchaser), represent a majority of the total number of Shares then outstanding (assuming full conversion of the Preferred Shares into Common Shares) and (2) any waiting periods or approvals under applicable antitrust laws having expired, been terminated or been obtained. The Offer is not conditioned upon Parent or the Purchaser obtaining financing.
4. Any stock transfer taxes applicable to the sale of Shares to the Purchaser pursuant to the Offer will be paid by the Purchaser, except as otherwise provided in Instruction 6 of the Letter of Transmittal.

If you wish to have us tender any or all of your Shares, please so instruct us by completing, executing, detaching and returning to us the instruction form below. An envelope to return your instructions to us is enclosed. If you authorize tender of your Shares, all such Shares will be tendered unless otherwise specified on the instruction form. Your instructions should be forwarded to us in ample time to permit us to submit a tender on your behalf by the Expiration Date.

The Offer is not being made to, nor will tenders be accepted from or on behalf of, holders of Shares in any jurisdiction in which the making of the Offer or acceptance thereof would not be in compliance with the laws of such jurisdiction.

Payment for Shares purchased pursuant to the Offer will in all cases be made only after timely receipt by Computershare Shareholder Services, Inc. (the "Depositary") of (i) certificates representing the Shares tendered or timely confirmation of the book-entry transfer of such Shares into the account maintained by the Depositary at The Depository Trust Company (the "Book-Entry Transfer Facility"), pursuant to the procedures set forth in Section 3 of the Offer to Purchase, (ii) the Letter of Transmittal (or a facsimile thereof), properly completed and duly executed, with any required signature guarantees or an Agent's Message (as defined in the Offer to Purchase), in connection with a book-entry delivery, and (iii) any other documents required by the Letter of Transmittal. Accordingly, payment may not be made to all tendering stockholders at the same time depending upon when certificates for or confirmations of book-entry transfer of such Shares into the Depositary's account at the Book-Entry Transfer Facility are actually received by the Depositary.

Instruction Form with Respect to
OFFER TO PURCHASE FOR CASH
All Outstanding Shares of Common Stock
and
All Outstanding Shares of Series B Convertible Preferred Stock
of
THERMA-WAVE, INC.
by
FENWAY ACQUISITION CORPORATION

The undersigned acknowledge(s) receipt of your letter and the enclosed Offer to Purchase dated January 18, 2007, and the related Letter of Transmittal, in connection with the offer by Fenway Acquisition Corporation to purchase all outstanding shares of common stock, par value $0.01 per share ("Common Shares"), and all outstanding shares of Series B Convertible Preferred Stock, par value $0.01 per share ("Preferred Shares", and together with Common Shares, "Shares") of Therma-Wave, Inc.

This will instruct you to tender the number of Shares indicated below held by you for the account of the undersigned, upon the terms and subject to the conditions set forth in the Offer to Purchase and the related Letter of Transmittal.

Name of Shares to be Tendered	SIGN HERE
_____	_____
Common Shares*	Signature(s)
_____	_____
Preferred Shares	Name(s)
Dated _____, 2007	_____
	Address(es)
	_____
	(Zip Code)

* Unless otherwise indicated, it will be assumed that all Common Shares held for the undersigned's account are to be tendered.

Exhibit (a)(1)(vi)

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number to Give the Payer — Social Security numbers have nine digits separated by two hyphens: *i.e.*, 000-00-0000. Employer identification numbers have nine digits separated by only one hyphen: *i.e.*, 00-0000000. The table below will help determine the number to give the payer.

For this type of account	Give the SOCIAL SECURITY number of:
1. An individual's account	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account(1)
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
4. a. The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)
b. So-called trust account that is not a legal or valid trust under State law	The actual owner(1)
5. Sole proprietorship account	The owner(3)

For this type of account	Give the EMPLOYER IDENTIFICATION number of:
6. A valid trust, estate, or pension trust	Legal entity (Do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title).(4)
7. Corporate account	The corporation
8. Association, club, religious, charitable, educational or other tax-exempt organization account	The organization
9. Partnership account	The partnership
10. A broker or registered nominee	The broker or nominee
11. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district or prison) that receives agricultural program payments	The public entity

(1) List first and circle the name of the person whose number you furnish.
(2) Circle the minor's name and furnish the minor's social security number.
(3) You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your social security number or employer identification number (if you have one).
(4) List first and circle the name of the legal trust, estate, or pension trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

How to Obtain a TIN

If you don't have a taxpayer identification number or you don't know your number, obtain Form SS-5, Application for a Social Security Number Card, or Form SS-4, Application for Employer Identification Number, at the local office of the Social Security Administration or the Internal Revenue Service ("IRS") and apply for a number.

Payees Exempt from Backup Withholding

Payees exempt from backup withholding on all payments include the following:

- An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of Section 401(f)(2).
- The United States or any of its agencies or instrumentalities.
- A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
- A foreign government or any of its political subdivisions, agencies, or instrumentalities.
- An international organization or any of its agencies or instrumentalities.

Other payees that **may be exempt** from backup withholding include:

- A corporation.
- A foreign central bank of issue.
- A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
- A futures commission merchant registered with the Commodity Futures Trading Commission.
- A real estate investment trust.
- An entity registered at all times during the tax year under the Investment Company Act of 1940.
- A common trust fund operated by a bank under section 584(a).
- A financial institution.
- A middleman known in the investment community as a nominee or custodian.
- A trust exempt from tax under section 664 or described in section 4947.

Payments of dividends and patronage dividends not generally subject to backup withholding include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends where the amount received is not paid in money.
- Payments made by certain foreign organizations.

Payments of interest not generally subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals. **Note:** You may be subject to backup withholding if this interest is $600 or more and is paid in the course of the payer's trade of business and you have not provided your correct taxpayer identification number to the payer.
- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.

Exempt payees described above should file Substitute Form W-9 to avoid possible erroneous backup withholding. FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" ON THE FACE OF THE FORM IN PART II, SIGN AND DATE THE FORM, AND RETURN IT TO THE PAYER.

Certain payments, other than interest, dividends and patronage dividends that are not subject to information reporting are also not subject to backup withholding. For details, see the regulations under sections 6041, 6041A(a), 6045 and 6050A.

Privacy Act Notice. — Section 6109 requires most recipients of dividend, interest or other payments to give their correct taxpayer identification numbers to payers who must report the payments to the IRS. The IRS uses the numbers for identification purposes and to help verify the accuracy of tax returns. Payers must be given the numbers whether or not recipients are required to file tax returns. Payers must generally withhold 28% (or such other rate specified by the Internal Revenue Code) of taxable interest, dividend and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

Penalties

(1) Penalty for Failure to Furnish Taxpayer Identification Number. — If you fail to furnish your correct taxpayer identification number to a payer, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

(2) Civil Penalty for False Information With Respect to Withholding. — If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of $500.

(3) Criminal Penalty for Falsifying Information. — Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.

Exhibit (d)(1)

AGREEMENT AND PLAN OF MERGER

dated as of

January 7, 2007

among

KLA-TENCOR CORPORATION,

FENWAY ACQUISITION CORPORATION

and

THERMA-WAVE, INC.

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "**Agreement**") dated as of January 7, 2007, among KLA-Tencor Corporation, a Delaware corporation ("**Parent**"), Fenway Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent ("**Merger Subsidiary**"), and Therma-Wave, Inc., a Delaware corporation (the "**Company**").

WHEREAS, it is proposed that Merger Subsidiary will commence a tender offer (as it may be amended from time to time in accordance with this Agreement, the "**Offer**") to acquire (i) all of the outstanding shares of Company's common stock, par value $0.01 per share (the "**Company Shares**"), at a price of $1.65 per share in cash, net to the holder thereof (such amount, or any different amount per share offered pursuant to the Offer in accordance with the terms of this Agreement, the "**Common Offer Price**") and (ii) all of the outstanding shares of the Company's Series B Convertible Preferred Stock, par value $0.01 per share (the "**Series B Convertible Preferred Shares**" and, together with the Company Shares, the "**Tender Shares**"), at a price of $1.65 per Company Share into which such Series B Convertible Preferred Shares are then convertible on the date of consummation of the Offer, in cash, net to the holder thereof (such amount, or any different amount per share offered pursuant to the offer in accordance with the terms of this Agreement, the "**Series B Offer Price**" and, together with the Common Offer Price, the "**Offer Price**"), each on the terms and subject to the conditions set forth herein;

WHEREAS, it is also proposed that, following the consummation of the Offer, Merger Subsidiary will merge with and into the Company, with the Company surviving the merger as a wholly-owned subsidiary of Parent, and each share that is not tendered and accepted pursuant to the Offer will thereupon be cancelled and converted into the right to receive cash in an amount equal to the Offer Price, on the terms and subject to the conditions set forth herein;

WHEREAS, the board of directors of each of the Company, Parent and Merger Subsidiary have approved this Agreement and deem it advisable and in the best interests of their respective stockholders to consummate the Offer, the Merger and the other transactions contemplated hereby, on the terms and subject to the conditions set forth herein; and

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent's and Merger Subsidiary's willingness to enter into this Agreement, the directors and executive officers of the Company and certain stockholders of the Company have agreed to tender their Tender Shares pursuant to the Tender and Support Agreement substantially in the form attached as Exhibit A (the "**Tender and Support Agreement**").

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE 1
Definitions

Section 1.01 . *Definitions.* (a) As used herein, the following terms have the following meanings:

"**Acquisition Proposal**" means, other than the transactions contemplated by this Agreement, any Third-Party offer, proposal or inquiry relating to, or any Third-Party indication of interest in, (i) any acquisition or purchase, direct or indirect, of 20% or more of the consolidated assets of the Company and its Subsidiaries or any equity or voting securities of the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company, which equity or voting securities constitute 20% or more of the voting power of all of the equity and voting securities of the Company or such Subsidiary, (ii) any takeover bid, tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any Third Party beneficially owning any equity or voting securities of the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company, which equity or voting securities constitute 20% or more of the voting power of all of the equity and voting securities of the Company or such Subsidiary, (iii) a merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization or other similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company as a result of which the holders of the Company's or such Subsidiary's equity or voting securities immediately prior to such transaction will hold less than 80% of the voting power of the Company or such Subsidiary (or other surviving or resulting entity, as applicable) immediately after the transaction or (iv) a sale of substantially all the assets, liquidation, dissolution or other similar transaction of the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. As used in this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Applicable Competition Law**" means (i) the HSR Act and (ii) any Applicable Law analogous to the HSR Act or otherwise regulating antitrust, competition or merger control matters in one or more foreign jurisdictions.

"**Applicable Law**" means, with respect to any Person, any international, national, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, judicial decision, decree, ruling or other similar requirement or restriction enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

"**Business Day**" means a day other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company Balance Sheet**" means the consolidated balance sheets of the Company as of March 31, 2006 and the footnotes thereto set forth in the Company 10-K.

"**Company Balance Sheet Date**" means March 31, 2006.

"**Company Convertible Security**" means (i) the Series B Convertible Preferred Shares, (ii) any options (including, without limitation, Company Stock Options), warrants, stock appreciation rights, convertible promissory notes or other securities convertible into, or exercisable or exchangeable for Company Shares and/or the Series B Convertible Preferred Shares and (iii) any other conversion or exchange right or other right or agreement to purchase, redeem, repurchase or otherwise acquire any equity or equity-linked security of the Company.

"**Company Disclosure Schedule**" means the disclosure schedule dated the date of this Agreement regarding this Agreement that has been provided by the Company to Parent and Merger Subsidiary.

"**Company Equity Plan**" means any of the Company's (i) 1997 Stock Purchase and Option Plan, (ii) 1997 Employee Stock Purchase and Option Plan, (iii) 1997 Special Employee Stock Purchase and Option Plan and (iv) 2000 Equity Incentive Plan, as amended.

"**Company Stock Option**" means any option to purchase the Company Shares granted under a Company Equity Plan.

"**Company 10-K**" means the Company's annual report on Form 10-K for the fiscal year ended April 2, 2006.

"**Contract**" means any written or oral contract, agreement, note, bond, indenture, mortgage, guarantee, option, lease, license, sales or purchase order, warranty, commitment or other instrument, obligation or binding arrangement or understanding of any kind.

"**Delaware Law**" means the General Corporation Law of the State of Delaware.

"**Environmental Laws**" means any Applicable Law or any agreement with any Governmental Authority or other third party relating to human health and safety, protection of the indoor or outdoor environment or to Hazardous Substances.

"**Environmental Permits**" means all permits, licenses, franchises, certificates, approvals and other similar authorizations of any Governmental Authority relating to or required by Environmental Laws and affecting, or relating to, the business of the Company or any of its Subsidiaries as currently conducted.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**ERISA Affiliate**" of any entity means any other entity that, together with such entity, would be treated as a single employer under Section 414 of the Code.

"**GAAP**" means generally accepted accounting principles in the United States.

"**Governmental Authority**" means (i) any government or any state, department, local authority or other political subdivision thereof, (ii) any governmental body, agency, authority (including any central bank, taxing authority or transgovernmental or supranational entity or authority), minister or instrumentality (including any court or tribunal) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or (iii) the Nasdaq.

"**Hazardous Substance**" means any pollutant, contaminant, waste or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material, including petroleum, its derivatives, by-products and other hydrocarbons, or any other substance, waste or material regulated under any Environmental Law.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"**Indebtedness**" means, collectively, any (i) indebtedness for borrowed money, (ii) indebtedness evidenced by any bond, debenture, note, mortgage, indenture or other debt instrument or debt security, (iii) amounts owing as deferred purchase price for the purchase of any property or (iv) guarantees with respect to any indebtedness or obligation of a type described in clauses (i) through (iii) above of any other Person.

"**Intellectual Property Rights**" means (i) patents and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations thereof) registered or applied for in the United States and all other nations throughout the world, (ii) rights associated with trademarks, service marks, trade dress, logos, domain names, rights of publicity, trade names and corporate names (whether or not registered) in the United States and all other nations throughout the world, including all registrations and applications for registration of the foregoing, (iii) copyrights (whether or not registered) and registrations and applications for registration thereof in the United States and all other nations throughout the world, including all moral rights, renewals, extensions, reversions or restorations associated with such copyrights, now or hereafter provided by law, regardless of the medium of fixation or means of expression, (iv) rights in trade secrets and other confidential, business information (including pricing and cost information, business and marketing plans and customer and supplier lists) and know-how (including manufacturing and production processes and techniques and research and development information), (v) any other similar type of proprietary intellectual property right and (vi) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing.

"**Knowledge**" means (i) with respect to the Company, the actual knowledge of the officers of the Company listed on Schedule I hereto and, (ii) with respect to any other Person that is not an individual, the actual knowledge of such Person's officers, and in each case, also includes the knowledge each such officer would reasonably be expected to have by reason of his or her position as an officer of the Company or such other Person.

"**Licensed Intellectual Property Rights**" means all Intellectual Property Rights owned by a third party and licensed or sublicensed to the Company or any of its Subsidiaries.

"**Lien**" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

"**made available**" means that, with respect to any document, Contract or information, such item was, (i) available on the SEC's EDGAR database, (ii) delivered to the other party or (iii) posted and accessible by the other party within the "Project Fenway" workspace on the Intralinks on-line data room, in each case with respect to any document, Contract or information required to be made available as of the date of this Agreement, no later than 12:00 noon New York City time on the date preceding the date of this Agreement.

"**Material Adverse Effect**" means any fact, circumstance, change or effect that, individually or when taken together with all other such facts, circumstances, changes or effects that exist at the date of determination, has or is reasonably likely to have a material adverse effect on (i) the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole, or (ii) (to the extent applicable) the Company's ability to timely consummate the Merger and the other transactions contemplated by this Agreement in accordance with the terms of this Agreement, excluding, in the case of clause (i) above, any such effect resulting from or arising out of: (A) any loss of or adverse change in the relationship of the Company and its Subsidiaries with their respective employees, customers, partners or suppliers arising out of or related to the announcement, pendency or consummation of the Offer or the Merger, (B) general economic, market or political conditions (including acts of terrorism or war or other force majeure events) that do not disproportionately affect the Company and its Subsidiaries, taken as a whole, (C) general conditions in the industry in which the Company and its Subsidiaries operate that do not disproportionately affect the Company and its Subsidiaries, taken as a whole, (D) any changes (after the date of this Agreement) in GAAP or Applicable Law, (E) any failure to take any action as a result of compliance with the restrictions or other prohibitions set forth in the second sentence of Section 7.01, (F) any failure of the Company to meet internal or analysts' expectations or projections (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred), or (G) any Proceeding made or brought by any holder of Tender Shares (on the holder's own behalf or on behalf of the Company) arising out of or related to this Agreement or any of the transactions contemplated hereby (including the Offer and the Merger).

"**Nasdaq**" means the Nasdaq Global Market.

"**1933 Act**" means the Securities Act of 1933, as amended.

"**1934 Act**" means the Securities Exchange Act of 1934, as amended.

"**Owned Intellectual Property Rights**" means all Intellectual Property Rights owned by the Company or any of its Subsidiaries.

"**Other Company Representations**" means the representations and warranties of the Company contained in this Agreement, other than the Specified Company Representations.

"**Parent Shares**" means the shares of common stock, $0.001 par value, of Parent.

"**Permitted Lien**" means (i) any Lien disclosed on the Company Balance Sheet, (ii) any Lien for Taxes not yet due or being contested in good faith by any appropriate Proceedings (and for which adequate accruals or reserves have been established on the Company Balance Sheet), (iii) mechanic's and other similar statutory liens that do not materially detract from the value or materially interfere with any present or intended use of the property or assets to which such Lien relates and (iv) any Lien (other than those securing Indebtedness) incurred in the ordinary course of business consistent with past practice that does not materially detract from the value or materially interfere with any present or intended use of the property or assets to which such Lien relates.

"**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

"**Proceeding**" means any suit, claim, action, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, review, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

"**Registered Intellectual Property Rights**" means (i) patents registered in the United States and all other nations throughout the world, (ii) registrations of trademarks, service marks, trade dress, logos, domain names, rights of publicity, trade names and corporate names in the United States and all other nations throughout the world, and (iii) registrations of copyrights in the United States and all other nations throughout the world.

"**Registered Intellectual Property Right Applications**" means (i) patent applications applied for in the United States and all other nations throughout the world, (ii) applications for registration of trademarks, service marks, trade dress, logos, domain names, rights of publicity, trade names and corporate names in the United States and all other nations throughout the world, and (iii) applications for registration of copyrights in the United States and all other nations throughout the world.

"**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002.

"**SEC**" means the Securities and Exchange Commission.

"**Series B Holders**" means the Persons that, as of the date of determination, are holders of Series B Convertible Preferred Shares.

"**Series B Warrants**" means the warrants to purchase Company Shares held by the Series B Holders.

"**Specified Company Representations**" means the representations and warranties of the Company contained in Sections 5.02, 5.05 (except for Sections 5.05(b), 5.05(e) and 5.05(f)), 5.15 and 5.21.

"**Subsidiary**" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person.

"**Superior Proposal**" means any *bona fide*, unsolicited, written Acquisition Proposal (including for the avoidance of doubt with respect to a series of related transactions such as a tender offer followed by a merger) which did not result from a breach of Section 7.04 made by a Third Party which, if consummated, would result in a Third Party (or in the case of a direct merger between a Third Party or any Subsidiary of such Third Party and the Company, the stockholder of such Third Party) owning, directly or indirectly, all of the outstanding Tender Shares or all or substantially all the consolidated assets of the Company and its Subsidiaries, and which Acquisition Proposal the Company Board determines in good faith by a majority vote, after considering the advice of its outside legal counsel and of a financial advisor of nationally recognized reputation and taking into account all of the terms and conditions of such Acquisition Proposal, including any break-up fees, expense reimbursement provisions and conditions to consummation, (i) is more favorable and provides greater value to all the Company's stockholders than as provided hereunder (including any changes to the terms of this Agreement or the Offer proposed by Parent prior to the time of such determination in response to such Superior Proposal or otherwise), (ii) is not subject to any financing condition (and if financing is required, such financing is then fully committed to the Third Party) and (iii) is reasonably capable of being completed on the terms proposed without unreasonable delay, taking into account all financial, legal, regulatory and other aspects of such Acquisition Proposal.

"**Third Party**" means any Person, including as defined in Section 13(d) of the 1934 Act, other than Parent or any of its Affiliates.

"**Voting Shares**" means the sum of the number of Company Shares then issued and outstanding and the number of unissued Company Shares issuable

upon conversion of all Series B Convertible Preferred Shares then issued and outstanding. For the avoidance of doubt, Voting Shares shall exclude any unissued Company Shares issuable upon conversion of any Company Convertible Security other than Series B Convertible Preferred Shares.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
401(k) Termination Date	7.06
Adverse Recommendation Change	7.04
Agreement	Preamble
Board Recommendation	2.02
Certificates	3.04
Closing	3.02
Common Offer Price	Recitals
Company	Preamble
Company Board	2.02
Company Disclosure Documents	5.09
Company Proxy Statement	5.09
Company SEC Documents	5.07
Company Securities	5.05
Company Shares	Recitals
Company Subsidiary Securities	5.06
Confidentiality Agreement	7.03
Continuing Employees	8.04
Effective Time	3.02
Employee Plans	5.19
End Date	11.01
ESPP	7.06
Exchange Agent	3.04
Grant Date	5.05
In-the-Money Company Option	3.06
Indemnified Person	8.03
internal controls	5.07
Material Contract	5.14
Material Exclusive IP Rights	5.16
Merger	3.01
Merger Consideration	3.03
Merger Subsidiary	Preamble
Minimum Condition	2.01
Multiemployer Plan	5.19
Offer	Recitals

Term	Section
Offer Documents	2.01
Offer Price	Recitals
Option Exchange Ratio	3.06
Parent	Preamble
Payment Event	12.04
Regulatory Conditions	11.01
Representatives	7.04
Schedule TO	2.01
Schedule 14D-9	2.02
Series B Convertible Preferred Shares	Recitals
Series B Offer Price	Recitals
Subsequent Offering Period	2.01
Stockholder Approval	5.02
Stockholder Meeting	7.02
Surviving Corporation	3.01
Tax	5.17
Taxing Authority	5.17
Tax Return	5.17
Tax Sharing Agreements	5.17
Tender Shares	Recitals
Tender and Support Agreement	Recitals
Top-Up Option	2.04
Top-Up Option Company Shares	2.04
Uncertificated Shares	3.04

Section 1.02 . *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the

terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2
The Offer

Section 2.01 . *The Offer.* (a) *Provided* that nothing shall have occurred that, had the Offer been commenced, would give rise to a right to terminate the Offer pursuant to Article 11 hereof, as promptly as practicable after the date of this Agreement, Merger Subsidiary shall commence (within the meaning of Rule 14d-2 under the 1934 Act) the Offer. The Offer and the obligation of Merger Subsidiary to accept for payment and to pay for any Tender Shares shall be subject only to the condition that there shall be validly tendered in accordance with the terms of the Offer, prior to the scheduled expiration date of the Offer (as it may be extended hereunder) and not withdrawn, Tender Shares that, together with the Tender Shares then directly or indirectly owned by Parent and/or Merger Subsidiary, represent a majority of the Voting Shares (the "**Minimum Condition**") and to the other conditions set forth in Annex I hereto. Merger Subsidiary expressly reserves the right to waive any of the conditions to the Offer and to make any change in the terms of or conditions to the Offer; *provided* that unless otherwise provided by this Agreement or previously approved by the Company in writing (i) the Minimum Condition may not be waived, (ii) no change may be made that changes the form of consideration to be paid, decreases the Offer Price or the number of Tender Shares sought in the Offer or imposes conditions to the Offer in addition to those set forth in Annex I or amends any terms of the Offer in any manner adverse to the holders of Tender Shares and (iii) the Offer may not be extended except as set forth in this Section 2.01(a). Subject to the terms and conditions of this Agreement, the Offer shall expire at midnight, New York City time, on the date that is 20 Business Days (determined using Rule 14d-1(g)(3) of the 1934 Act) after the date that the Offer is commenced. Notwithstanding the foregoing, Merger Subsidiary shall extend the Offer (1) from time to time for successive periods of no more than 10 Business Days each (or such longer period as may be consented to by the Company, such consent not to be unreasonably withheld) if, at the scheduled or extended expiration date of the Offer, any of the conditions to the Offer shall not have been satisfied or waived, until such conditions are satisfied or waived, and (2) for any period required by any rule, regulation, interpretation or position of the SEC or the staff thereof applicable to the Offer or any period required by Applicable Law. Following

expiration of the Offer, Merger Subsidiary may, in its sole discretion, provide one or more subsequent offering periods (together, the "**Subsequent Offering Period**") in accordance with Rule 14d-11 of the 1934 Act. Subject to the foregoing, including the requirements of Rule 14d-11, and upon the terms and subject to the conditions of the Offer, Merger Subsidiary shall, and Parent shall cause it to, accept for payment and pay for, promptly after the expiration of the Offer, all Tender Shares (x) validly tendered and not withdrawn pursuant to the Offer and (y) validly tendered in the Subsequent Offering Period.

(b) As soon as practicable on the date of commencement of the Offer, Parent and Merger Subsidiary shall (i) file with the SEC a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments and supplements thereto and including exhibits thereto, the "**Schedule TO**") that shall include the summary term sheet required thereby and, as exhibits or incorporated by reference thereto, the Offer to Purchase and a form of letter of transmittal and summary advertisement, if any, in respect of the Offer (collectively, together with any amendments or supplements thereto, the "**Offer Documents**") and (ii) cause the Offer Documents to be disseminated to holders of Tender Shares. The Company shall promptly furnish to Parent and Merger Subsidiary in writing all information concerning the Company that may be required by applicable securities laws or reasonably requested by Parent or Merger Subsidiary for inclusion in the Schedule TO or the Offer Documents. Each of Parent, Merger Subsidiary and the Company agrees promptly to correct any information provided by it for use in the Schedule TO and the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect. Parent and Merger Subsidiary agree to take all steps necessary to cause the Schedule TO as so corrected to be filed with the SEC and the Offer Documents as so corrected to be disseminated to holders of Tender Shares, in each case as and to the extent required by applicable U.S. federal securities laws. The Company and its counsel shall be given a reasonable opportunity to review and comment on the Schedule TO and the Offer Documents each time before any such document is filed with the SEC, and Parent and Merger Subsidiary shall give reasonable and good faith consideration to any comments made by the Company and its counsel. Parent and Merger Subsidiary shall provide the Company and its counsel with (i) any comments or other communications, whether written or oral, that Parent, Merger Subsidiary or their counsel may receive from time to time from the SEC or its staff with respect to the Schedule TO or Offer Documents promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in the response of Parent and Merger Subsidiary to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with Parent and Merger Subsidiary or their counsel in any discussions or meetings with the SEC.

Section 2.02 . *Company Action*. (a) The Company hereby consents to the Offer and represents that its board of directors (the "**Company Board**"), at a meeting duly called and held prior to the execution of this Agreement, has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Offer and the Merger, are fair to and in the best interests of the Company's stockholders, (ii) approved and adopted this Agreement and the transactions contemplated hereby, including the Offer and the Merger, in accordance with the requirements of Delaware Law and (iii) recommended acceptance of the Offer by the Company's stockholders and the Stockholder Approval (such recommendation, the "**Board Recommendation**"). Except to the extent permitted by Section 7.04(b), the Company hereby represents that no Adverse Recommendation Change has occurred. The Company hereby consents to the inclusion of the foregoing determinations and approvals in the Offer Documents and, to the extent that no Adverse Recommendation Change shall have occurred in accordance with Section 7.04(b), the Company hereby consents to the inclusion of the Board Recommendation in the Offer Documents. The Company further represents that Needham & Company, LLC has delivered to the Company Board its opinion that the consideration to be paid in the Offer and the Merger is fair to the holders of the Company Shares from a financial point of view. The Company has been advised that its directors and executive officers and certain stockholders of the Company have agreed to tender their Tender Shares pursuant to the Offer pursuant to the terms of the Tender and Support Agreement. The Company shall promptly furnish Parent with a list of its stockholders, mailing labels and any available listing or computer file containing the names and addresses of all record holders of Tender Shares and lists of securities positions of Tender Shares held in stock depositories, in each case true and correct as of the most recent practicable date, and shall provide to Parent such additional information (including updated lists of stockholders, mailing labels and lists of securities positions) and such other assistance as Parent may reasonably request in order to disseminate the Offer as required by Applicable Law. Subject to Applicable Laws, and except for such steps as are necessary to disseminate the Offer Documents and any other documents necessary to consummate the Merger, Parent and Merger Subsidiary (and their respective agents) shall:

(x) hold in confidence the information contained in any such lists of stockholders, mailing labels and listings or files of securities positions and additional information;

(y) use such information only in connection with the Offer and the Merger; and

(z) if this Agreement shall be terminated pursuant to Article 11, deliver (and use their respective reasonable efforts to cause their agents to deliver) to the Company or destroy (in which case Parent shall deliver or cause to be delivered notice of such destruction, certified by an

officer of Parent) any and all copies and any extracts or summaries from such information then in their possession or control.

(b) As soon as practicable on the day that the Offer is commenced, the Company shall file with the SEC and disseminate to holders of Tender Shares, in each case as and to the extent required by applicable U.S. federal securities laws, a Solicitation/Recommendation Statement on Schedule 14D-9 (together with any amendments or supplements thereto, the "**Schedule 14D-9**") that, subject to Section 7.04(b), shall reflect the Board Recommendation. Each of Parent and Merger Subsidiary shall promptly furnish to the Company in writing all information concerning Parent and Merger Subsidiary that may be required by applicable securities laws or reasonably requested by the Company for inclusion in the Schedule 14D-9. Each of the Company, Parent and Merger Subsidiary agrees promptly to correct any information provided by it for use in the Schedule 14D-9 if and to the extent that it shall have become false or misleading in any material respect. The Company agrees to take all steps necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and to be disseminated to holders of Tender Shares, in each case as and to the extent required by applicable U.S. federal securities laws. Parent and its counsel shall be given a reasonable opportunity to review and comment on the Schedule 14D-9 each time before it is filed with the SEC, and the Company shall give reasonable and good faith consideration to any comments made by Parent, Merger Subsidiary and their counsel. The Company shall provide Parent, Merger Subsidiary and their counsel with (i) any comments or other communications, whether written or oral, that the Company or its counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in the Company's response to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the Company or its counsel in any discussions or meetings with the SEC.

Section 2.03 . *Directors*. (a) Effective upon the acceptance for payment of any Tender Shares pursuant to the Offer, Parent shall be entitled to designate the number of directors, rounded up to the next whole number, on the Company Board that equals the product of (i) the total number of directors on the Company Board (giving effect to the election of any additional directors pursuant to this Section) and (ii) the percentage that the number of Tender Shares beneficially owned by Parent and Merger Subsidiary (including Tender Shares accepted for payment) bears to the total number of Tender Shares outstanding, and the Company shall take all action necessary to cause Parent's designees to be elected or appointed to the Company Board, including increasing the number of directors, and seeking and accepting resignations of incumbent directors. At such time, the Company shall also take all actions necessary to cause individuals designated by Parent to constitute the number of members, rounded up to the next whole

number, on (i) each committee of the Company Board and (ii) each board of directors of each Subsidiary of the Company (and each committee thereof) that represents the same percentage as such individuals represent on the Company Board, in each case to the fullest extent permitted by Applicable Law. Notwithstanding the foregoing, until Parent and/or Merger Subsidiary acquires a majority of the Voting Shares, the Company shall (subject to the fiduciary duties of the Company Board) use its reasonable efforts to ensure that all of the members of the Company Board and such committees and boards as of the date of this Agreement who are not employees of the Company shall remain members of the Company Board and such committees and boards until the Effective Time.

(b) The Company's obligations to appoint Parent's designees to the Company Board shall be subject to Section 14(f) of the 1934 Act and Rule 14f-1 promulgated thereunder. The Company shall (subject to the following sentence) promptly take all actions, and shall include in the Schedule 14D-9 such information with respect to the Company and its officers and directors, as Section 14(f) and Rule 14f-1 require in order to fulfill its obligations under this Section. Parent shall supply to the Company in writing any information with respect to itself and its nominees, officers, directors and affiliates required by Section 14(f) and Rule 14f-1.

(c) Following the election or appointment of Parent's designees pursuant to Section 2.03(a) and until the Effective Time, the approval of a majority of the directors of the Company then in office who were not designated by Parent shall be required to authorize (and such authorization shall constitute the authorization of the Company Board and no other action on the part of the Company, including any action by any other director of the Company, shall be required to authorize) any termination of this Agreement by the Company, any amendment of this Agreement requiring action by the Company Board, any extension of time for performance of any obligation or action hereunder by Parent or Merger Subsidiary and any waiver of compliance with any of the agreements or conditions contained herein for the benefit of the Company.

Section 2.04 . *Top-Up Option.* (a) The Company hereby irrevocably grants to Merger Subsidiary an option (the "**Top-Up Option**"), exercisable upon the terms and conditions set forth in this Section 2.04, to purchase that number of Company Shares (the "**Top-Up Option Company Shares**") equal to the lowest number of Company Shares that, when added to the number of Company Shares directly or indirectly owned by Parent or Merger Subsidiary at the time of such exercise, shall constitute one share more than 90% of the Company Shares (taking into account the issuance of the Top-Up Option Company Shares) at a price per share equal to the Common Offer Price; *provided* that in no event shall the Top-Up Option be exercisable for a number of Company Shares in excess of the Company's then authorized and unissued Company Shares (giving effect to

Company Shares reserved for issuance under any Company Equity Plan as if such shares were outstanding).

(b) *Provided* that no Applicable Law shall prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Option Company Shares in respect thereof, Merger Subsidiary may exercise the Top-Up Option, in whole but not in part, at any time after the consummation of the Offer and prior to the earlier to occur of (i) the Effective Time and (ii) the termination of this Agreement in accordance with its terms.

(c) Parent and Merger Subsidiary acknowledge that the Company Shares that Merger Subsidiary may acquire upon exercise of the Top-Up Option will not be registered under the 1933 Act and will be issued in reliance upon an exemption thereunder for transactions not involving a public offering. Each of Parent and Merger Subsidiary hereby represents and warrants to the Company that Merger Subsidiary is, and will be upon the purchase of the Top-Up Option Company Shares, an "accredited investor", as defined in Rule 501 of Regulation D under the 1933 Act. Merger Subsidiary agrees that the Top-Up Option and the Top-Up Option Company Shares to be acquired upon exercise of the Top-Up Option are being and will be acquired by Merger Subsidiary for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof (within the meaning of the 1933 Act).

ARTICLE 3
The Merger

Section 3.01 . *The Merger.* (a) At the Effective Time, Merger Subsidiary shall be merged (the "**Merger**") with and into the Company in accordance with Delaware Law, whereupon the separate existence of Merger Subsidiary shall cease, and the Company shall be the surviving corporation (the "**Surviving Corporation**").

(b) From and after the Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Subsidiary, all as provided under Delaware Law.

Section 3.02 . *The Closing; Effectiveness.* Upon the terms and subject to the conditions set forth herein, the closing of the Merger (the "**Closing**") will take place at 10:00 a.m., San Francisco time, as soon as practicable (and, in any event, within three Business Days) after satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger set forth in Article 10 (excluding conditions that, by their terms, are satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted by Applicable Law) of such

conditions at the Closing), unless this Agreement has been terminated pursuant to its terms or unless another time or date is agreed to in writing by the parties hereto. The Closing shall be held at the offices of Davis Polk & Wardwell, 1600 El Camino Real, Menlo Park, California 94025, unless another place is agreed to by the parties hereto. As soon as practicable after the Closing, the Company and Merger Subsidiary shall file the certificate of merger with the Delaware Secretary of State and make all other filings or recordings required by Delaware Law in connection with the Merger. The Merger shall become effective at such time (the "**Effective Time**") as the certificate of merger is duly filed with the Delaware Secretary of State or at such later time as is specified in the certificate of merger.

Section 3.03 . *Conversion of Shares.* At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof:

(a) except as otherwise provided in Section 3.03(b), Section 3.03(c) or Section 3.05, each Company Share outstanding immediately prior to the Effective Time shall be converted into the right to receive $1.65 in cash or such other amount as may have been paid for each Company Share in the Offer, without interest (the "**Merger Consideration**");

(b) each Tender Share held by the Company as treasury stock (other than Company Shares in any Employee Plan of the Company) or owned by Parent or Merger Subsidiary (whether pursuant to the Offer or otherwise) immediately prior to the Effective Time shall be canceled, and no payment shall be made with respect thereto;

(c) each Company Share held by any Subsidiary (other than Merger Subsidiary) of either the Company or Parent immediately prior to the Effective Time shall be converted into such number of shares of stock of the Surviving Corporation such that each such Subsidiary owns the same percentage of Surviving Corporation immediately following the Effective Time as such Subsidiary owned in the Company immediately prior to the Effective Time; and

(d) each share of common stock of Merger Subsidiary outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

Section 3.04 . *Surrender and Payment*. (a) Prior to the Effective Time, Parent shall appoint an exchange agent (the "**Exchange Agent**") for the purpose of exchanging for the Merger Consideration (i) certificates representing Company Shares (the "**Certificates**") or (ii) uncertificated Company Shares (the "**Uncertificated Shares**"). Parent shall make available to the Exchange Agent, as needed, the Merger Consideration to be paid in respect of the Certificates and the

Uncertificated Shares. As promptly as practicable after the Effective Time, Parent shall send, or shall cause the Exchange Agent to send, to each record holder of Company Shares at the Effective Time a letter of transmittal and instructions (which shall specify that the delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates or transfer of the Uncertificated Shares to the Exchange Agent) for use in such exchange.

(b) Each holder of Company Shares that have been converted into the right to receive the Merger Consideration shall be entitled to receive, upon (i) surrender to the Exchange Agent of a Certificate, together with a properly completed letter of transmittal, or (ii) receipt of an "agent's message" by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, the Merger Consideration payable for each Company Share represented by a Certificate or for each Uncertificated Share. Until so surrendered or transferred, as the case may be, each such Certificate or Uncertificated Share shall represent after the Effective Time for all purposes only the right to receive such Merger Consideration.

(c) If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such Certificate or Uncertificated Share or establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(d) After the Effective Time, there shall be no further registration of transfers of Company Shares. If, after the Effective Time, Certificates or Uncertificated Shares are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration provided for, and in accordance with the procedures set forth, in this Article 3.

(e) Any portion of the Merger Consideration made available to the Exchange Agent pursuant to Section 3.04(a) (and any interest or other income earned thereon) that remains unclaimed by the holders of Company Shares six months after the Effective Time shall be returned to Parent, upon demand, and any such holder who has not exchanged such Company Shares for the Merger Consideration in accordance with this Section 3.04 prior to that time shall thereafter look only to Parent for payment of the Merger Consideration in respect of such Company Shares without any interest thereon. Notwithstanding the foregoing, Parent shall not be liable to any holder of Company Shares for any amounts paid to a public official pursuant to applicable abandoned property,

escheat or similar laws. Any amounts remaining unclaimed by holders of Company Shares two years after the Effective Time (or such earlier date immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority) shall become, to the extent permitted by Applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(f) Any portion of the Merger Consideration made available to the Exchange Agent pursuant to Section 3.04(a) to pay for Company Shares for which appraisal rights have been perfected shall be returned to Parent, upon demand.

Section 3.05 . *Dissenting Shares*. Notwithstanding Section 3.02, Company Shares outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of the Merger or consented thereto in writing and who has demanded appraisal for such Company Shares in accordance with Delaware Law shall not be converted into a right to receive the Merger Consideration, unless such holder fails to perfect, withdraws or otherwise loses the right to appraisal. If, after the Effective Time, such holder fails to perfect, withdraws or loses the right to appraisal, such Company Shares shall be treated as if they had been converted as of the Effective Time into the right to receive the Merger Consideration. The Company shall give Parent prompt notice of any demands received by the Company for appraisal of Company Shares, and Parent shall have the right to participate in all negotiations and Proceedings with respect to such demands. Except with the prior written consent of Parent, the Company shall not make any payment with respect to, or offer to settle or settle, any such demands.

Section 3.06 . *Stock Options*. (a) Except as provided in Section 3.06(b), contingent on and immediately following the Effective Time, each Company Stock Option outstanding at the Effective Time with an exercise price less than $1.65 per Company Share (each, an "**In-the-Money Company Option**") that is unvested at the Effective Time and held by a then-current employee of the Company or its Subsidiaries shall cease to represent a right to acquire Company Shares and shall be converted automatically into an option to purchase Parent Shares on the same terms and conditions (including vesting schedule) as applied to such In-the-Money Company Option immediately prior to the Effective Time, except that (i) the number of Parent Shares (rounded down to the nearest whole share) subject to each assumed In-the-Money Company Option shall be determined by multiplying the number of Company Shares subject to the unvested portion of such In-the-Money Company Option by a fraction (the "**Option Exchange Ratio"**), the numerator of which is the per share Merger Consideration, and the denominator of which is the average closing price of the Parent Shares on the Nasdaq over the five trading days immediately preceding (but not including) the date on which the Effective Time occurs, and (ii) the

exercise price per Parent Share (rounded up to the nearest whole cent) shall equal the per share exercise price of such In-the-Money Company Option immediately prior to the Effective Time divided by the Option Exchange Ratio.

(b) Each (i) In-the-Money Company Option that is fully vested at the Effective Time, (ii) In-the-Money Company Option held by a non-employee director or former director of the Company and (iii) In-the-Money Company Option which by its terms, or the terms of the Company Equity Plan under which such option was granted, provides that such option shall become fully vested and convert into a right to receive a payment of cash upon the Merger or the other transactions contemplated hereby, shall in each case, contingent on and immediately following the Effective Time, be cancelled and converted automatically into the right to receive, as soon as practicable after the Effective Time, an amount in cash determined by multiplying (x) the excess, if any, of $1.65 over the applicable exercise price of such option by (y) the number of Company Shares subject to the vested portion of such In-the-Money Company Option.

(c) Contingent on and immediately following the Effective Time, each Company Stock Option that is not an In-the-Money Company Option assumed pursuant to Section 3.06(a) shall cease to represent a right to acquire Company Shares and shall be cancelled in full.

(d) Parent shall take such actions as are necessary for the assumption of In-the-Money Company Options pursuant to Section 3.06(a), including the reservation, issuance and listing of Parent Shares as is necessary to effectuate the transactions contemplated by Section 3.06(a). Parent shall prepare and file with the SEC a registration statement on Form S-8 with respect to the Parent Shares subject to such assumed In-the-Money Company Options and shall use its reasonable best efforts to have such registration statement declared effective as soon as practicable following the Effective Time and to maintain the effectiveness of such registration statement covering such assumed In-the-Money Company Options (and to maintain the current status of the prospectus contained therein) for so long as such In-the-Money Company Options remain outstanding, subject in each case to policies and practices generally applicable to options to purchase Parent Common Stock at such time. It is intended that the assumption of the In-the-Money Company Options assumed by Parent shall comply with Sections 409A and 424 of the Code and this Section 3.06 shall be construed consistent with such intent.

Section 3.07 . *Adjustments*. If, during the period between the date of this Agreement and the Effective Time, any change in the number of outstanding Company Shares shall occur, including by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period, the cash

payable pursuant to the Offer, the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted, *provided* that no such adjustment shall be required upon any change in the number of outstanding Company Shares that results from any exercise of (i) Company Stock Options outstanding as of the date of this Agreement or (ii) Series B Convertible Preferred Shares or Series B Warrants in accordance with their terms and the terms of the Tender and Support Agreement to which the Series B Holders are party.

Section 3.08 . *Withholding Rights.* Each of Merger Subsidiary, the Surviving Corporation and Parent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to Articles 2 and 3 such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of any Tax law. If Merger Subsidiary, the Surviving Corporation or Parent, as the case may be, so withholds amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which Merger Subsidiary, the Surviving Corporation or Parent, as the case may be, made such deduction and withholding.

Section 3.09 . *Lost Certificates*. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall pay, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to be paid in respect of the Company Shares formerly represented by such Certificate, as contemplated by this Article 3.

ARTICLE 4
The Surviving Corporation

Section 4.01 . *Certificate of Incorporation*. The certificate of incorporation of the Company shall be amended at the Effective Time as set forth in Annex II and, as so amended, shall be the certificate of incorporation of the Surviving Corporation until amended in accordance with Applicable Law.

Section 4.02 . *Bylaws*. The bylaws of Merger Subsidiary in effect at the Effective Time shall be the bylaws of the Surviving Corporation until amended in accordance with Applicable Law.

Section 4.03 . *Directors and Officers*. From and after the Effective Time, until successors are duly elected or appointed and qualified in accordance with Applicable Law, (i) the directors of Merger Subsidiary at the Effective Time shall

be the directors of the Surviving Corporation and (ii) the officers of the Merger Subsidiary at the Effective Time shall be the officers of the Surviving Corporation.

ARTICLE 5

Representations and Warranties of the Company

Subject to Section 12.05, except as set forth in the Company Disclosure Schedule, the Company represents and warrants to Parent that:

Section 5.01 . *Corporate Existence and Power*. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which do not have, individually or in the aggregate, a Material Adverse Effect on the Company. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified does not have, individually or in the aggregate, a Material Adverse Effect on the Company. The Company has heretofore made available to Parent true and complete copies of the certificate of incorporation and bylaws of the Company as currently in effect. The Company has heretofore made available to Parent complete and correct copies of the minutes (or, in the case of draft minutes, the most recent drafts thereof as of the date of this Agreement) of all meetings of the stockholders of the Company, the Company Board and each committee of the Company Board and the boards of directors of each of the Company's Subsidiaries held since January 1, 1999.

Section 5.02 . *Corporate Authorization.* (a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate powers and, except for the affirmative vote of the holders of a majority of the Voting Shares to adopt and approve the Merger Agreement and the Merger (the "**Stockholder Approval**") (if required by Applicable Law), have been duly authorized by all necessary corporate action on the part of the Company. The Stockholder Approval (if required by Applicable Law) is the only vote of the holders of any of the Company's capital stock necessary in connection with the consummation of the Merger and the other transactions contemplated hereby. This Agreement constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar Applicable Law affecting creditors' rights generally and by general principles of equity.

(b) At a meeting duly called and held prior to the execution of this Agreement, the Company Board (i) unanimously determined that this Agreement and the transactions contemplated hereby are fair to and in the best interests of the Company's stockholders, (ii) unanimously approved and adopted this Agreement and the transactions contemplated hereby in accordance with the requirements of the Delaware Law and (iii) unanimously made the Board Recommendation. No Adverse Recommendation Change has occurred.

Section 5.03 . *Governmental Authorization.* The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby require no action by the Company by or in respect of, or filing with, any Governmental Authority, other than (i) the filing of a certificate of merger with respect to the Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of any Applicable Competition Law, (iii) compliance with any applicable requirements of the 1933 Act, the 1934 Act and any other applicable U.S. state or federal securities laws, and (iv) any actions or filings the absence of which do not have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 . *Non-Contravention*. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Merger and the other transactions contemplated hereby do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of the Company, (ii) assuming compliance with the matters referred to in Section 5.03, contravene, conflict with, or result in a violation or breach of any provision of any Applicable Law, (iii) assuming compliance with the matters referred to in Section 5.03, require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would reasonably be expected to constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under any provision of any agreement or other instrument binding upon the Company or any of its Subsidiaries or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company or any of its Subsidiaries or (iv) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, with such exceptions, in the case of each of clauses (ii) through (iv), as do not have, individually or in the aggregate, a Material Adverse Effect on the Company; *provided* that in determining whether a Material Adverse Effect on the Company would result, any adverse effect otherwise excluded by clause (A) of the definition of "Material Adverse Effect" shall be taken into account.

Section 5.05 . *Capitalization.* (a) The authorized capital stock of the Company consists of 75,000,000 Company Shares, 1,000,000 shares of Series A Convertible Preferred Stock, par value $0.01 per share, and 5,000,000 shares of Preferred Stock, par value $0.01 per share, of which 10,400 shares have been designated as Series B Convertible Preferred Shares. As of the close of business on January 5, 2007, there were issued and outstanding:

(i) 37,230,516 Company Shares,

(ii) no shares of Series A Convertible Preferred Stock,

(iii) 10,400 Series B Convertible Preferred Shares,

(iv) Series B Warrants to purchase 1,560,000 Company Shares,

(v) warrants (other than the Series B Warrants) to purchase 115,000 Company Shares and

(vi) stock options to purchase an aggregate of 6,136,388 Company Shares (of which options to purchase an aggregate of 3,727,638 Company Shares were exercisable).

All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any Company Equity Plan will be, when issued in accordance with the respective terms thereof, duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the certificate of incorporation or bylaws of the Company or any agreement to which the Company is a party or by which it is bound and all outstanding Company Shares and Company Convertible Securities have been, and all shares that may be issued pursuant to any Company Equity Plan will be, issued in compliance in all material respects with federal and state securities law.

(b) Section 5.05(b) of the Company Disclosure Schedule sets forth, as of the close of business on January 5, 2007, a complete and correct list of all outstanding Company Stock Options, including with respect to each such option, the number of shares subject to such option, the name of the holder, the grant date, the exercise price per share, the vesting schedule (including any portion that would become vested as a result of the transactions contemplated hereby, whether alone or when combined with any other event) and expiration date of each such option, whether the option is an "incentive stock option" under Section 422 of the Code or a non-qualified stock option, and the form of award agreement pursuant to which such option was granted.

(c) The Company Equity Plans are the only plans or programs the Company or any of its Subsidiaries has maintained under which currently

outstanding stock options, restricted shares, restricted share units, stock appreciation rights, performance shares or other compensatory equity-based awards have been or may be granted.

(d) Except as set forth in this Section 5.05 and for changes since the close of business on January 5, 2007 resulting from the exercise of Company Stock Options outstanding on such date, as of the date of this Agreement there are no outstanding (i) shares of capital stock of or other voting securities or ownership interests in the Company, (ii) Company Convertible Securities or (iii) restricted shares, restricted share units, stock appreciation rights, performance shares, contingent value rights, "phantom" stock or similar securities or rights that are derivative of or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities or ownership interests in the Company (the items in clauses (i) through (iii) being referred to collectively as the "**Company Securities**"). There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Securities.

(e) No Company Securities are owned by any Subsidiary of the Company.

(f) With respect to the Company Stock Options, (i) each Company Stock Option intended to qualify as an "incentive stock option" under Section 422 of the Code so qualifies, (ii) each grant of a Company Stock Option was duly authorized no later than the date on which the grant of such Company Stock Option was by its terms to be effective (the "**Grant Date**") by all necessary corporate action, including, as applicable, approval by the Company Board (or a duly constituted and authorized committee thereof), or a duly authorized delegate thereof, and any required stockholder approval by the necessary number of votes or written consents, (iii) each such grant was made in accordance with the terms of the applicable Company Equity Plan, the 1934 Act and all other Applicable Law, including the rules of the Nasdaq, (iv) the per share exercise price of each Company Stock Option was not less than the fair market value of a Company Share on the applicable Grant Date, and (v) each such grant was properly accounted for in all material respects in accordance with GAAP in the financial statements (including the related notes) of the Company and disclosed in the Company SEC Documents in accordance with the 1934 Act and all other Applicable Law. The Company has not granted, and there is no and has been no Company policy or practice to grant, Company Stock Options prior to, or otherwise coordinate the grant of Company Stock Options with, the release or other public announcement of material information regarding the Company or any of its Subsidiaries or their financial results or prospects.

Section 5.06 . *Subsidiaries*. (a) Each Subsidiary of the Company is a corporation duly incorporated or organized, validly existing and in good standing

under the laws of its jurisdiction of incorporation or organization, as applicable, has all corporate or other organizational powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which do not have, individually or in the aggregate, a Material Adverse Effect. Each such Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified does not have, individually or in the aggregate, a Material Adverse Effect. All Subsidiaries of the Company and their respective jurisdictions of incorporation are identified in the Company 10-K.

(b) All of the outstanding capital stock of or other voting securities or ownership interests in each Subsidiary of the Company is owned by the Company, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities or ownership interests). There are no outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock of or other voting securities or ownership interests in any Subsidiary of the Company, (ii) options, warrants or other rights or arrangements to acquire from the Company or any of its Subsidiaries, or other obligations or commitments of the Company or any of its Subsidiaries to issue, any capital stock of or other voting securities or ownership interests in, or any securities convertible into or exchangeable for any capital stock of or other voting securities or ownership interests in, any Subsidiary of the Company or (iii) restricted shares, restricted share units, stock appreciation rights, performance shares, contingent value rights, "phantom" stock or similar securities or rights that are derivative of or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities or ownership interests in any Subsidiary of the Company (the items in clauses (i) through (iii) being referred to collectively as the "**Company Subsidiary Securities**"). There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Subsidiary Securities.

(c) Neither the Company nor any of its Subsidiaries directly or indirectly owns any equity, ownership, profit, voting or similar interest in or any interest convertible, exchangeable or exercisable for, any equity, profit, voting or similar interest in, any Person (other than a Subsidiary of the Company).

Section 5.07 . *SEC Filings and the Sarbanes-Oxley Act.* (a) The Company has made available to Parent (i) the Company's annual reports on Form 10-K for its fiscal years ended March 28, 2004, April 3, 2005 and April 2, 2006 (ii) its quarterly reports on Form 10-Q for its fiscal quarters ended July 2, 2006, and October 2, 2006, (iii) its proxy or information statements relating to meetings of

the stockholders of the Company held (or actions taken without a meeting by such stockholders) since April 2, 2006, and (iv) all of its other reports, statements, schedules and registration statements filed with the SEC since April 2, 2006 (the documents referred to in this Section 5.07(a), collectively, the "**Company SEC Documents**").

(b) Since April 2, 2006, the Company has filed with or furnished to the SEC each report, statement, schedule, form or other document or filing required by Applicable Law to be filed or furnished at or prior to the time so required. No Subsidiary of the Company is required to file or furnish any report, statement, schedule, form or other document with, or make any other filing with, or furnish any other material to, the SEC.

(c) As of its filing date, each Company SEC Document complied, and each such Company SEC Document filed subsequent to the date of this Agreement will comply, as to form in all material respects with the applicable requirements of the 1933 Act and the 1934 Act, as the case may be.

(d) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such filing), each Company SEC Document filed pursuant to the 1934 Act did not, and each such Company SEC Document filed subsequent to the date of this Agreement will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (provided that the Company makes no representation or warranty with respect to information furnished in writing by Parent or Merger Subsidiary for inclusion or use in any such Company SEC Document).

(e) Each Company SEC Document that is a registration statement, as amended or supplemented, if applicable, filed pursuant to the 1933 Act, as of the date such statement or amendment became effective, did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(f) The Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the 1934 Act). Such disclosure controls and procedures are designed and effective to ensure that material information required to be disclosed by the Company, including its consolidated Subsidiaries, in the reports that it files or submits under the 1934 Act, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the 1934 Act are being prepared.

(g) The Company has made available to Parent copies of all comment letters received by the Company from the SEC since January 1, 2002 relating to the Company SEC Documents, together with all written responses of the Company thereto. As of the date of this Agreement, there are no outstanding or unresolved comments in any such comment letters received by the Company from the SEC. As of the date of this Agreement, to the Knowledge of the Company, none of the Company SEC Documents is the subject of any ongoing review by the SEC.

(h) The Company and its Subsidiaries have established and maintained a system of internal control over financial reporting (as defined in Rule 13a-15 under the 1934 Act) ("**internal controls**"). Such internal controls are sufficient to provide reasonable assurance regarding the reliability of the Company's financial reporting and the preparation of Company financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on its most recent evaluation of internal controls prior to the date of this Agreement, to the Company's auditors and audit committee, to its Knowledge, (x) any significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. The Company has made available to Parent a summary of any such disclosure made by management to the Company's auditors and audit committee since January 1, 2002.

(i) There are no outstanding loans or other extensions of credit made by the Company or any of its Subsidiaries to any executive officer (as defined in Rule 3b-7 under the 1934 Act) or director of the Company. The Company has not, since the enactment of the Sarbanes-Oxley Act, taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

Section 5.08 . *Financial Statements*. The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included in the Company SEC Documents (i) comply as to form, as of their respective filing dates with the SEC, in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (ii) have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except, in the case of unaudited statements, for the absence of footnotes), and (iii) fairly present (except as may be indicated in the notes thereto) the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal year-end adjustments in the case of any unaudited interim financial statements).

Section 5.09 . *Disclosure Documents.* (a) Each document required to be filed by the Company with the SEC or required to be distributed or otherwise disseminated to the Company's stockholders in connection with the transactions contemplated by this Agreement (the "**Company Disclosure Documents**"), including the Schedule 14D-9, the proxy or information statement of the Company (the "**Company Proxy Statement**"), if any, to be filed with the SEC in connection with the Merger, and any amendments or supplements thereto, when filed, distributed or disseminated, as applicable, will comply as to form in all material respects with the applicable requirements of the 1934 Act.

(b) (i) The Company Proxy Statement, as supplemented or amended, if applicable, at the time such Company Proxy Statement or any amendment or supplement thereto is first mailed to stockholders of the Company and at the time such stockholders vote on adoption of this Agreement and (ii) any Company Disclosure Document (other than the Company Proxy Statement), at the time of the filing of such Company Disclosure Document or any supplement or amendment thereto and at the time of any distribution or dissemination thereof, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 5.09(b) will not apply to statements or omissions included in the Company Disclosure Documents based upon information furnished to the Company in writing by Parent specifically for use therein.

(c) The information with respect to the Company or any of its Subsidiaries that the Company furnishes to Parent in writing specifically for use in the Schedule TO and the Offer Documents, at the time of the filing of the Schedule TO, at the time of any distribution or dissemination of the Offer Documents and at the time of the consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Section 5.10 . *Absence of Certain Changes.* Except as disclosed in the Company SEC Documents filed (or furnished on Form 8-K) prior to the date of this Agreement or any exhibits thereto, since the Company Balance Sheet Date, the business of the Company and its Subsidiaries has been conducted in the ordinary course consistent with past practice and there has not been:

(a) any event, occurrence, development or state of circumstances or facts that has, individually or in the aggregate, a Material Adverse Effect;

(b) through the date of this Agreement, any splitting, combination or reclassification of any shares of capital stock of the Company or any of its

Subsidiaries or declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock (other than dividends by any of the Company's wholly-owned Subsidiaries to the Company or another wholly-owned Subsidiary), or redemption, repurchase or other acquisition or offer to redeem, repurchase, or otherwise acquire any Company Securities or any Company Subsidiary Securities;

(c) through the date of this Agreement, any acquisition (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, by the Company or any of its Subsidiaries of any assets, securities, properties, interests or businesses, other than in the ordinary course of business of the Company and its Subsidiaries in a manner that is consistent with past practice;

(d) any sale, lease or other transfer, or creation or incurrence of any Lien on, any assets, securities, properties, interests or businesses of the Company or any of its Subsidiaries, other than in the ordinary course of business consistent with past practice or Permitted Liens;

(e) through the date of this Agreement, the making by the Company or any of its Subsidiaries of any loans, advances or capital contributions to, or investments in, any other Person (other than a wholly-owned Subsidiary of the Company), other than in the ordinary course of business consistent with past practice;

(f) through the date of this Agreement, the creation, incurrence, assumption or sufferance to exist by the Company or any of its Subsidiaries of any Indebtedness to any Person other than to a wholly-owned Subsidiary of the Company or in the ordinary course of business consistent with past practice;

(g) any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the business or assets of the Company or any of its Subsidiaries that has been or could reasonably be expected to be, individually or in the aggregate, material to the Company and its subsidiaries, taken as a whole;

(h) through the date of this Agreement, (i) any payment, discharge, settlement or satisfaction of any material claims, liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge, settlement or satisfaction in the ordinary course of business consistent with past practice, (ii) any waiver, relinquishment, release, grant, transfer or assignment any right of material value, or (iii) any waiver of any material benefits, or agreement to modify in any adverse respect, or failure to enforce, or consent to any matter with respect to which its consent is required

under, any confidentiality, standstill or similar Contract to which the Company or any of its Subsidiaries is a party and that relates to an Acquisition Proposal;

(i) through the date of this Agreement, any change in the Company's methods of accounting, except as required by changes in GAAP or in Regulation S-X of the 1934 Act as agreed to by its independent public accountants; or

(j) through the date of this Agreement, any settlement, or offer or proposal to settle, (i) any material Proceeding or other claim involving or against the Company or any of its Subsidiaries, (ii) any stockholder litigation or dispute against the Company or any of its officers or directors or (iii) any Proceeding or dispute that relates to the transactions contemplated hereby.

Section 5.11 . *No Undisclosed Material Liabilities*. There are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than:

(a) liabilities or obligations disclosed and provided for in the Company Balance Sheet or in the notes thereto,

(b) liabilities or obligations incurred under this Agreement or in connection with the transactions contemplated hereby;

(c) executory liabilities or obligations under any Contract made available to Parent to which the Company or its Subsidiaries is a party or is bound; and

(d) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Company Balance Sheet Date that do not have, individually or in the aggregate, a Material Adverse Effect.

Section 5.12 . *Compliance with Laws and Court Orders*. The Company and each of its Subsidiaries is and, since April 2, 2003, has been in compliance with, and to the Knowledge of the Company is not under investigation with respect to and has not been threatened to be charged with or given notice of any violation of, any Applicable Law, except for failures to comply or violations that do not have, individually or in the aggregate, a Material Adverse Effect.

Section 5.13 . *Litigation*. There is no Proceeding pending against, or, to the Knowledge of the Company, threatened against, the Company, any of its Subsidiaries, any present or former officer, director or employee of the Company or any of its Subsidiaries relating to their actions or inactions in such status or any other Person for whom the Company or any of such Subsidiary may be liable or any of their respective properties before any court or arbitrator or before or by any

Governmental Authority, except for any Proceeding that does not have, individually or in the aggregate, a Material Adverse Effect.

Section 5.14 . *Material Contracts.* (a) Section 5.14 of the Company Disclosure Schedule contains a complete and correct list of each of the following contracts as of the date of this Agreement to which either the Company or any of its Subsidiaries is a party to or legally bound:

(i) each Contract between the Company or any of its Subsidiaries and any of the 10 largest customers of the Company and its Subsidiaries (determined on the basis of aggregate revenues received by the Company or any of its Subsidiaries over the four consecutive fiscal quarter period ended October 2, 2006);

(ii) except for the Contracts disclosed in clause (i) above, each Contract that involves sale of products, performance of services or development commitments by the Company or any of its Subsidiaries, providing for either (A) annual payments of $1,000,000 or more or (B) aggregate payments of $2,000,000 or more;

(iii) each Contract between the Company or any of its Subsidiaries and any of the 10 largest suppliers or licensors to the Company and any of its Subsidiaries (determined on the basis of aggregate payments made by the Company or any of its Subsidiaries over the four consecutive fiscal quarter period ended October 2, 2006);

(iv) any partnership, joint venture or other similar agreement or arrangement;

(v) each Contract relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);

(vi) each Contract relating to Indebtedness or the deferred purchase price of property of or by the Company or any of its Subsidiaries (in either case, whether incurred, assumed, guaranteed or secured by any asset) entered into other than in the ordinary course of business consistent with past practice;

(vii) each Contract to which the Company or any of its Subsidiaries is a party creating or granting a Lien (including Liens upon properties acquired under conditional sales, capital leases or other title retention or security devices), other than Permitted Liens;

(viii) each Contract under which the Company or any of its Subsidiaries has, directly or indirectly, made any loan, capital contribution to, or other investment in, any Person (other than the Company or any of its Subsidiaries and other than extensions of credit or loans in the ordinary course of business consistent with past practice);

(ix) any agency, dealer, sales representative, marketing or other similar agreement that is material to the business of the Company or any of its Subsidiaries as currently conducted;

(x) each Contract that contains provisions restricting the Company or any Subsidiary from competing in any line of business or with any Person or in any area or which would so restrict Parent, the Company or any of their respective Affiliates after the Effective Time;

(xi) each Contract that (A) grants to any Third Party any exclusive license or supply or distribution agreement or other exclusive rights, (B) grants to any Third Party any "most favored nation" rights, rights of first refusal, rights of first negotiation or similar rights with respect to any product, service or Intellectual Property Rights that are material to the business of the Company or any of its Subsidiaries as currently conducted or (C) contains any provision that requires the purchase of all or a specified substantial portion of the Company's or any of its Subsidiaries' requirements from a given third party, or any other similar provision;

(xii) each Contract pursuant to which the Company or any of its Subsidiaries has been granted any license to Intellectual Property Rights that is material to the business of the Company or any of its Subsidiaries as currently conducted, other than licenses granted in the ordinary course of business of the Company and its Subsidiaries consistent with past practice;

(xiii) each lease or sublease (whether of real or of tangible personal property providing for annual payments in excess of $50,000) to which the Company or any of its Subsidiaries is a party as either lessor or lessee;

(xiv) any agreement with any director or officer of the Company or any Subsidiary or with any "associate" or any member of the "immediate family" (as such terms are respectively defined in Rules 12b-2 and 16a-1 of the 1934 Act) of any such director or officer; or

(xv) any other agreement, commitment, arrangement or plan not made in the ordinary course of business involving the payment or receipt of annual payments in excess of $1,000,000.

(b) As of the date of this Agreement, each agreement, contract, plan, lease, arrangement or commitment disclosed in any Schedule to this Agreement or required to be disclosed pursuant to this Section (each, a "**Material Contract**") is a valid and binding agreement of the Company or a Subsidiary, as the case may be, and is in full force and effect, and none of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any other party thereto is in default or breach in any material respect under the terms of any such agreement, contract, plan, lease, arrangement or commitment, and, to the Knowledge of the Company, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute any event of default thereunder.

(c) To the Knowledge of the Company, as of the date of this Agreement no person is renegotiating, or has an express right (absent any default or breach of a Material Contract) pursuant to the terms of any Material Contract to renegotiate, any material amount paid or payable to the Company under any Material Contract or any other material term or provision of any Material Contract. As of the date of this Agreement, the Company has not received any written or verbal indication of an intention to terminate any of the Material Contracts by any of the parties to any of the Material Contracts.

(d) Complete and correct copies of each Material Contract in existence as of the date of this Agreement have been made available by the Company to Parent prior to the date of this Agreement.

Section 5.15 . *Finders' Fees*. Except for Needham & Company, LLC, a copy of whose engagement agreement has been made available to Parent, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who might be entitled to any fee or commission from the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement.

Section 5.16 . Intellectual Property.

(a) Section 5.16(a)(i) of the Company Disclosure Schedule contains a true and complete list as of the date of this Agreement of each Registered Intellectual Property Right and Registered Intellectual Property Right Application included in the Owned Intellectual Property Rights as of the date of this Agreement. Section 5.16(a)(ii) of the Company Disclosure Schedule contains a true and complete list as of the date of this Agreement of all agreements (whether written or otherwise, including license agreements, research agreements, development agreements, distribution agreements, settlement agreements, consent

to use agreements and covenants not to sue, but excluding licenses to the Company or its Subsidiaries for commercial off the shelf computer software that are generally available on nondiscriminatory pricing terms) that are material to the business of the Company or any of its Subsidiaries as conducted as of the date of this Agreement and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service under development as of the date of this Agreement), to which the Company or any of its Subsidiaries is a party or otherwise bound, granting any right to use, exploit or practice, or a covenant not to sue under, any Intellectual Property Rights.

(b) The Licensed Intellectual Property and the Owned Intellectual Property Rights together constitute all Intellectual Property Rights necessary to, or used or held for use in, the conduct of the business of the Company and its Subsidiaries as currently conducted and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service currently under development). There are no material restrictions on the disclosure, use, license or transfer of the Owned Intellectual Property Rights. The consummation of the transactions contemplated by this Agreement will not alter, encumber, impair or extinguish any Owned Intellectual Property Rights or Licensed Intellectual Property Rights that are material to the business of the Company or any of its Subsidiaries as currently conducted and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service currently under development).

(c) As of the date of this Agreement, none of the Company or any of its Subsidiaries has given to any Person since the beginning of the Company's 2003 fiscal year an indemnity in connection with any Intellectual Property Right, other than indemnities (i) that, individually or in the aggregate, could not result in liability to the Company in excess of the amounts paid by such Person to the Company or any of its Subsidiaries or (ii) that arise under the standard form terms and conditions of sale of the Company or any of its Subsidiaries, copies of which are attached in Section 5.16(c) of the Company Disclosure Schedule.

(d) None of the Company or any of its Subsidiaries has infringed, misappropriated or otherwise violated any Intellectual Property Right of any Third Party. There is no Proceeding pending against, or, to the Knowledge of the Company, threatened against, the Company or any of its Subsidiaries (i) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any of its Subsidiaries in any of the Owned Intellectual Property Rights and the Licensed Intellectual Property Rights, (ii) alleging that the use of the Owned Intellectual Property Rights or the Licensed Intellectual Property Rights or any services provided, processes used or products manufactured, used, imported or sold by the Company or any of its Subsidiaries do or may misappropriate, infringe

or otherwise violate any Intellectual Property Right of any Third Party or (iii) alleging that the Company or any of its Subsidiaries have infringed, misappropriated or otherwise violated any Intellectual Property Right of any Third Party. None of the Company or any of its Subsidiaries has received from any Third Party an offer to license any Intellectual Property Rights of such Third Party within the past three years.

(e) None of the Owned Intellectual Property Rights or exclusively licensed Licensed Intellectual Property Rights that are material to the business of the Company or any of its Subsidiaries as currently conducted and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service currently under development) (collectively, the "**Material Exclusive IP Rights**") has been adjudged invalid or unenforceable in whole or part, and, to the Knowledge of the Company, all of the Material Exclusive IP Rights are subsisting and have not expired or been cancelled or abandoned. There is no Proceeding pending, or, to the Knowledge of the Company, threatened, challenging or contesting the scope, validity, or enforceability in whole or in part of the Material Exclusive IP Rights.

(f) The Company and its Subsidiaries exclusively own all Owned Intellectual Property Rights and hold all of the Company's and its Subsidiaries' licenses under the Licensed Intellectual Property Rights, in each case free and clear of any Lien, other than Permitted Liens. For each patent or patent application (other than patent applications applied for within the past ninety (90) days), trademark registration or trademark application, service mark registration or service mark application, or copyright registration or copyright application included in the Material Exclusive IP Rights and owned by the Company or any of its Subsidiaries, an unbroken chain of assignments from the initial owner to the Company or its Subsidiaries has been duly recorded with the Governmental Authority from which the patent or registration issued or before which the application or application for registration is pending, except for assignments within the past ninety (90) days which are in the process of recordation. All actions materially necessary to maintain the Material Exclusive IP Rights have been taken, including payment of applicable maintenance fees and filing of applicable statements of use.

(g) To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated any of the Material Exclusive IP Rights in a manner that materially impairs the value of such Material Exclusive IP Rights. The Company and its Subsidiaries have taken reasonable steps in accordance with normal industry practice to maintain the confidentiality of all trade secrets that are material to the business of the Company or any of its Subsidiaries as currently conducted and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service currently under development). None of the Owned Intellectual Property

Rights that are material to the business or operation of the Company or any of its Subsidiaries and the value of which to the Company or any of its Subsidiaries is contingent upon maintaining the confidentiality thereof, has been disclosed other than to employees, representatives and agents of the Company or any of its Subsidiaries or to Third Parties, all of whom are bound by written confidentiality agreements.

(h) The Company and its Subsidiaries have taken reasonable steps in accordance with normal industry practice to preserve and maintain reasonably complete notes and records relating to the Owned Intellectual Property Rights.

(i) With respect to each pending application for the Owned Intellectual Property Rights that is material to the business or operation of the Company or any of its Subsidiaries, the Company does not have Knowledge of any reason (except as disclosed in the official prosecution record for such application) that could reasonably be expected to prevent such pending application from being granted with coverage substantially equivalent to its latest amended version. None of the trademarks, service marks, applications for trademarks and applications for service marks included in the Owned Intellectual Property Rights that are material to the business or operation of the Company or any of its Subsidiaries has been the subject of an opposition or cancellation procedure. None of the patents and patent applications included in the Owned Intellectual Property Rights that are material to the business or operation of the Company or any of its Subsidiaries has been the subject of an interference, protest, public use Proceeding or third party reexamination request.

(j) To the extent that any Intellectual Property Right that is material to the business of the Company or any of its Subsidiaries as currently conducted and as proposed by the Company or any of its Subsidiaries to be conducted (in the latter case, only with respect to any product, technology or service currently under development) has been developed or created by any Person (including any current or former employee of the Company or any of its Subsidiaries) for the Company or any of its Subsidiaries, the Company or one of its Subsidiaries, as the case may be, has a written agreement with such Person conveying exclusive ownership or an exclusive, perpetual license to the Company or its Subsidiaries with respect thereto.

(k) To the Knowledge of the Company, the Company and its Subsidiaries have at all times complied in all material respects with all applicable laws and regulations relating to privacy, data protection and the collection and use of personal information and user information gathered or accessed in the course of the operations of the Company or any of its Subsidiaries. The Company and its Subsidiaries have at all times complied in all material respects with all rules, policies and procedures established by the Company or any of its Subsidiaries from time to time with respect to the foregoing. No claims have been asserted or,

to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries by any person or entity alleging a violation of such person's or entity's privacy, personal or confidentiality rights under any such laws, regulations, rules, policies or procedures. The consummation of the transaction contemplated by this Agreement will not materially breach or otherwise cause any material violation of any such laws, regulations, rules, policies or procedures.

(l) (i) the Company has not disclosed to any Person any material confidential source code that is part of the software owned or exclusively licensed by the Company, (ii) no Person, other than the Company, possesses any current or contingent right to obtain, modify, distribute, disclose or have disclosed to them any material confidential source code that is part of the software owned or exclusively licensed by the Company and (iii) the Company is not obligated to make any such source code generally available pursuant to the terms of any license or distribution model requiring the public distribution or disclosure of source code, including without limitation the GNU General Public License (GPL), or the GNU Lesser General Public License or GNU Library General Public License (LGPL).

Section 5.17 . *Taxes*. (a) All income, franchise and other material Tax Returns required by Applicable Law to be filed on or before the Closing Date with any Taxing Authority by, or on behalf of, the Company or any of its Subsidiaries have been filed when due in accordance with all Applicable Law, and all such Tax Returns are, or will be at the time of filing, true and complete in all material respects.

(b) The Company and each of its Subsidiaries has paid (or has had paid on its behalf) or has withheld and remitted to the appropriate Taxing Authority all Taxes due and payable on or before the Closing Date, or, where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual for all Taxes through the end of the last period ending on or before the Closing Date for which the Company and its Subsidiaries ordinarily record items on their respective books.

(c) The income and franchise Tax Returns of the Company and its Subsidiaries through the Tax year ended March 31, 2006 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to extensions or waivers, has expired. Neither the Company nor any of its Subsidiaries has granted any extension or waiver of the statute of limitations period applicable to any Tax Return, which period (after giving effect to such extension or waiver) has not yet expired.

(d) There is no Proceeding or claim now pending or, to the Company's Knowledge, threatened against or with respect to the Company or its Subsidiaries in respect of any Tax or Tax asset.

(e) During the five-year period ending on the date of this Agreement, neither the Company nor any of its Subsidiaries was a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(f) Neither the Company nor any of its Subsidiaries owns an interest in real property in any jurisdiction in which a Tax is imposed, or the value of the interest is reassessed, on the transfer of an interest in real property and which treats the transfer of an interest in an entity that owns an interest in real property as a transfer of the interest in real property. The Company is not, nor has it been within 5 years of the date of this Agreement, a "United States real property holding corporation" within the meaning of Section 897 of the Code.

(g) Section 5.17(g) of the Company Disclosure Schedule contains a list of all jurisdictions (whether foreign or domestic) in which the Company or any of its Subsidiaries currently files Tax Returns.

(h) Since March 31, 2006, there has not been any Tax election made or changed, any annual tax accounting period made or changed, any method of tax accounting adopted or changed, any Tax Returns amended materially or claims for material Tax refunds filed, any closing agreement entered into, any Tax claim, audit or assessment settled, or any right to claim a material Tax refund, offset or other reduction in Tax liability surrendered.

"**Tax**" means (i) any tax, governmental fee or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a "**Taxing Authority**") responsible for the imposition of any such tax (domestic or foreign), and any liability for any of the foregoing as transferee, (ii) in the case of the Company or any of its Subsidiaries, liability for the payment of any amount of the type described in clause (i) as a result of being or having been before the Effective Time a member of an affiliated, consolidated, combined or unitary group, or a party to any agreement or arrangement, as a result of which liability of the Company or any of its Subsidiaries to a Taxing Authority is determined or taken into account with reference to the activities of any other Person, and (iii) liability of the Company or any of its Subsidiaries for the payment of any amount as a result of being party to any Tax Sharing Agreement or with respect to the payment of any amount imposed on any person of the type described in (i) or (ii) as a result of any existing express or implied agreement or arrangement (including an indemnification agreement or arrangement). "**Tax Return**" means any report,

return, document, declaration or other information or filing required to be supplied to any Taxing Authority with respect to Taxes, including information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information. "**Tax Sharing Agreements**" means (i) all existing written agreements or arrangements, and (ii) all existing unwritten agreements or arrangements entered into after June 30, 2005, in each case binding on the Company or any of its Subsidiaries and providing for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts, or gains for the purpose of determining any Person's Tax liability (excluding any indemnification agreement or arrangement pertaining to the sale or lease of assets or subsidiaries).

Section 5.18 . *Labor Matters.* The Company and its Subsidiaries are in material compliance with Applicable Law respecting employment and employment practices, terms and conditions of employment and wages and hours, and are not engaged in any unfair labor practice. Since the Company Balance Sheet Date through the date of this Agreement, there has not been any labor dispute, other than routine individual grievances, or to the Company's Knowledge any activity or Proceeding by a labor union or representative thereof to organize any employees of the Company or any of its Subsidiaries, which employees were not subject to a collective bargaining agreement at the Company Balance Sheet Date, or any lockouts, strikes, slowdowns, work stoppages or, to the Knowledge of the Company, threats thereof by or with respect to such employees. As of the date of this Agreement, there is no unfair labor practice complaint pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board.

Section 5.19 . *Employee Benefits Matters.*

(a) Section 5.19(a) of the Company Disclosure Schedule contains a correct and complete list identifying each "employee benefit plan," as defined in Section 3(3) of ERISA, each employment, severance or similar contract, plan, arrangement or policy and each other plan or arrangement (written or oral) providing for compensation, bonuses, loans, profit-sharing, stock option or other stock related rights or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangements), health or medical benefits, employee assistance program, disability or sick leave benefits, workers' compensation, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered or contributed to by the Company or any Affiliate and covers any employee or former employee of the Company or any of its Subsidiaries, or with respect to which the Company or any of its Subsidiaries has any liability. Copies of such

plans (and, if applicable, related trust or funding agreements or insurance policies) and all amendments thereto and written interpretations thereof have been furnished or made available to Parent together with the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) and, if applicable, tax return (Form 990) prepared in connection with any such plan or trust. Such plans are referred to collectively herein as the "**Employee Plans**."

(b) Neither the Company nor any ERISA Affiliate nor any predecessor thereof sponsors, maintains or contributes to, or has in the past sponsored, maintained or contributed to, any Employee Plan subject to Title IV of ERISA or any defined benefit plan.

(c) Neither the Company nor any ERISA Affiliate nor any predecessor thereof contributes to, or has in the past contributed to, any multiemployer plan, as defined in Section 3(37) of ERISA (a "**Multiemployer Plan**").

(d) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter, or has pending or has time remaining in which to file, an application for such determination from the Internal Revenue Service, and the Company is not aware of any reason why any such determination letter should be revoked or not be issued. The Company has made available to Parent copies of the most recent Internal Revenue Service determination or opinion letters with respect to each such Employee Plan.

(e) Each Employee Plan has been maintained in material compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including ERISA and the Code, which are applicable to such Employee Plan. No material events have occurred with respect to any Employee Plan that could result in payment or assessment by or against the Company of any material excise taxes under Sections 4972, 4975, 4976, 4977, 4979, 4980B, 4980D, 4980E or 5000 of the Code.

(f) There is no contract, plan or arrangement (written or otherwise) covering any employee or former employee of the Company or any of its Subsidiaries that, individually or collectively, would entitle any employee or former employee to any severance or other payment solely as a result of the transactions contemplated hereby, or could give rise to the payment of any amount that would not be deductible pursuant to the terms of Section 280G or 162(m) of the Code.

(g) Neither the Company nor any of its Subsidiaries has any liability in respect of post-retirement health, medical or life insurance benefits for retired, former or current employees of the Company or its Subsidiaries except as

required to avoid excise tax under Section 4980B of the Code or as required by comparable state law.

(h) Neither the Company nor any of its Subsidiaries is a party to or subject to, or is currently negotiating in connection with entering into, any collective bargaining agreement or other contract or understanding with a labor union or organization.

(i) There is no Proceeding pending against or involving or, to the Knowledge of the Company, threatened against or involving, any Employee Plan before any court or arbitrator or any state, federal or local governmental body, agency or official.

(j) Since the Company Balance Sheet Date, through the date of this Agreement, there has not been any (i) grant or increase of any severance or termination pay to (or amendment to any existing severance or termination pay arrangement with) any director, officer or employee of the Company or any of its Subsidiaries, (ii) increase in benefits payable under any existing severance or termination pay policies or employment agreements of the Company or any of its Subsidiaries, (iii) entering into of any employment, deferred compensation or other similar agreement (or amendment of any such existing agreement) with any director, officer or employee of the Company or any of its Subsidiaries, other than routine offers of at-will employment entered into in the ordinary course of business consistent with past practice, (iv) establishment, adoption or amendment (except as required by Applicable Law) of any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, compensation, stock option, restricted stock or other benefit plan or arrangement covering any director, officer or employee of the Company or any of its Subsidiaries or (v) increase in compensation, bonus or other benefits payable to any director, officer or employee of the Company or any of its Subsidiaries, other than in the ordinary course of business consistent with past practice;

(k) No current or former employee or director of the Company or any of its Subsidiaries will become entitled to any bonus, retirement, severance, job security or similar benefit or enhanced such benefit (including acceleration of vesting or exercise of an incentive award) as a result of the transactions contemplated hereby (either alone or together with any other event).

Section 5.20 . *Environmental Matters*. (a) Except as do not have, individually or in the aggregate, a Material Adverse Effect on the Company:

(i) no notice, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding is pending or, to the Knowledge of the Company, is threatened by any Governmental Authority

or other Person with respect to any matters relating to the Company or any of its Subsidiaries relating to and arising out of any Environmental Law or Environmental Permit;

(ii) the Company and its Subsidiaries are and have been in compliance with all applicable Environmental Laws and with the terms of all applicable Environmental Permits; and

(iii) there are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, arising under or relating to any Environmental Law, Environmental Permit or any Hazardous Substance and, to the Knowledge of the Company, there is no condition, situation or set of circumstances that could reasonably be expected to result in or be the basis for any such liability or obligation.

(b) There has been no material environmental investigation, study, audit, test, review or other analysis conducted of which the Company has Knowledge in relation to the current or prior business of the Company or any of its Subsidiaries or any property or facility now or previously owned, leased or operated by the Company or any of its Subsidiaries that has not been delivered to Parent at least five Business Days prior to the date of this Agreement.

(c) Neither the Company nor any of its Subsidiaries owns, leases or operates or has owned, leased or operated any real property, or conducts or has conducted any operations, in New Jersey or Connecticut. The consummation of the transactions contemplated in this Agreement will not trigger any requirement for any action, consent or approval, registration, remedial action or filing under any Environmental Law or Environmental Permit, including filings to be made or actions to be taken pursuant to the New Jersey Industrial Site Recovery Act or the "Connecticut Property Transfer Law" (Sections 22a-134 through 22-134e of the Connecticut General Statutes).

(d) For purposes of this Section 5.20, the terms "**Company**" and "**Subsidiaries**" shall include any entity that is, in whole or in part, a predecessor of the Company or any of its Subsidiaries.

Section 5.21 . *Antitakeover Statutes.* (a) The Company has taken all action necessary to exempt the Offer, the Merger, this Agreement, the Tender and Support Agreement and the transactions contemplated hereby and thereby from the provisions of Section 203 of Delaware Law, and, accordingly, no such Section nor other antitakeover or similar statute or regulation applies or purports to apply to any such transactions. No other "control share acquisition," "fair price," "moratorium" or other antitakeover laws enacted under U.S. state or federal laws

apply to this Agreement, the Tender and Support Agreement or any of the transactions contemplated hereby and thereby.

ARTICLE 6

Representations and Warranties of Parent

Parent represents and warrants to the Company that:

Section 6.01 . *Corporate Existence and Power*. Each of Parent and Merger Subsidiary is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not prevent, materially delay or materially impair Parent's and Merger Subsidiary's ability to consummate the transactions contemplated hereby. Merger Subsidiary is a direct wholly-owned Subsidiary of Parent and, since the date of its incorporation, Merger Subsidiary has not engaged in any activities other than in connection with or as contemplated by this Agreement.

Section 6.02 . *Corporate Authorization.* The execution, delivery and performance by Parent and Merger Subsidiary of this Agreement and the consummation by Parent and Merger Subsidiary of the transactions contemplated hereby are within the corporate powers of Parent and Merger Subsidiary and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of each of Parent and Merger Subsidiary enforceable against each such Person in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar Applicable Law affecting creditors' rights generally and by general principles of equity.

Section 6.03 . *Governmental Authorization.* The execution, delivery and performance by Parent and Merger Subsidiary of this Agreement and the consummation by Parent and Merger Subsidiary of the transactions contemplated hereby require no action by or in respect of, or filing with, any Governmental Authority, other than (i) the filing of a certificate of merger with respect to the Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which Parent is qualified to do business, (ii) compliance with any applicable requirements of any Applicable Competition Law, (iii) compliance with any applicable requirements of the 1933 Act, the 1934 Act or any other U.S. state or federal securities laws, (iv) any actions or filings the absence of which would not prevent, materially delay or materially impair Parent's and Merger Subsidiary's ability to consummate the transactions contemplated hereby.

Section 6.04 . *HSR Act*. Pursuant to Sections 802.4 and 801.10 of the HSR Act regulations, Parent has on January 5, 2007 determined in good faith that the Fair Market Value (as such term is defined under the HSR Act and the regulations promulgated thereunder) of the non-HSR Act exempt assets of Company is not greater than $56.7 million.

Section 6.05 . *Non-Contravention*. The execution, delivery and performance by Parent and Merger Subsidiary of this Agreement and the consummation by Parent and Merger Subsidiary of the transactions contemplated hereby do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of Parent or Merger Subsidiary, (ii) assuming compliance with the matters referred to in Section 6.03, contravene, conflict with, or result in any violation or breach of any provision of any Applicable Law or (iii) assuming compliance with the matters referred to in Section 6.03, require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, could become a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Parent or Merger Subsidiary is entitled under any provision of any agreement or other instrument binding upon Parent or Merger Subsidiary, with such exceptions, in the case of each of clause (ii) and (iii) above, as would not reasonably be expected to prevent, materially delay or materially impair Parent's and Merger Subsidiary's ability to consummate the transactions contemplated hereby.

Section 6.06 . *Disclosure Documents*. (a) The information with respect to Parent and any of its Subsidiaries that Parent furnishes to the Company in writing specifically for use in any Company Disclosure Document will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (i) in the case of the Company Proxy Statement, as supplemented or amended, if applicable, at the time such Company Proxy Statement or any amendment or supplement thereto is first mailed to stockholders of the Company and at the time such stockholders vote on adoption of this Agreement, and (ii) in the case of any Company Disclosure Document other than the Company Proxy Statement, at the time of the filing of such Company Disclosure Document or any supplement or amendment thereto and at the time of any distribution or dissemination thereof.

(b) The Schedule TO, when filed, and the Offer Documents, when distributed or disseminated, will comply as to form in all material respects with the applicable requirements of the 1934 Act and, at the time of such filing, at the time of such distribution or dissemination and at the time of consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the

circumstances under which they were made, not misleading; *provided* that this representation and warranty will not apply to statements or omissions included in the Schedule TO and the Offer Documents based upon information furnished to Parent or Merger Subsidiary in writing by the Company specifically for use therein.

Section 6.07 . *Litigation.* There is no Proceeding pending against or, to the Knowledge of Parent, threatened against, Parent or any of its Subsidiaries that would, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair Parent's or Merger Subsidiary's ability to consummate the transactions contemplated by this Agreement. Neither Parent nor any of its Subsidiaries is subject to any order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority or arbitrator against Parent or any of its Subsidiaries or naming Parent or any of its Subsidiaries as a party that would, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair Parent's or Merger Subsidiary's ability to consummate the transactions contemplated by this Agreement.

Section 6.08 . *Financing.* Parent has, or will have prior to the expiration of the Offer and the Merger, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to purchase all of the Tender Shares pursuant to the Offer and to make the payments in respect of Company Stock Options required by Section 3.06(b).

ARTICLE 7

Covenants of the Company

The Company agrees that:

Section 7.01 . *Conduct of the Company.* Except for matters contemplated by this Agreement or as otherwise consented to by Parent, from the date of this Agreement until the Effective Time, the Company shall, and shall cause each of its Subsidiaries to, conduct its business in the ordinary course consistent with past practice and in material compliance with all Applicable Laws and use reasonable efforts to (i) preserve intact its present business organization and relationships with Third Parties, (ii) maintain in effect all of its foreign, federal, state and local licenses, permits, consents, franchises, approvals and authorizations, (iii) keep available the services of its directors, officers and key employees and (iv) maintain satisfactory relationships with its customers, lenders, suppliers and others having material business relationships with it. Without limiting the generality of the foregoing, except as expressly contemplated by this Agreement, as otherwise consented to by Parent or as set forth in Section 7.01 of the Company

Disclosure Schedule, the Company shall not, nor shall it permit any of its Subsidiaries to:

(a) amend its articles of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise);

(b) split, combine or reclassify any shares of capital stock of the Company or any of its Subsidiaries or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of the capital stock of the Company or any of its Subsidiaries (other than dividends by any of the Company's wholly-owned Subsidiaries to the Company or another wholly-owned Subsidiary), or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or any Company Subsidiary Securities;

(c) (i) issue, deliver, sell, pledge, encumber or dispose of, or authorize any such action with respect to any shares of any Company Securities or Company Subsidiary Securities, other than the issuance of (A) any Company Shares upon the exercise of Company Stock Options that are outstanding on the date of this Agreement in accordance with the terms of those options on the date of this Agreement, (B) subject to Section 7.06(a), any Company Shares pursuant to the ESPP, (C) any Company Shares upon the conversion of Series B Convertible Preferred Shares or exercise of Series B Warrants in accordance with their terms and the terms of the Tender and Support Agreement to which the Series B Holders are party or (D) any Company Subsidiary Securities to the Company or any other Subsidiary or (ii) amend any term of any Company Security or any Company Subsidiary Security (in each case, whether by merger, consolidation or otherwise);

(d) other than in the ordinary course of business (i) enter into any new material line of business or (ii) incur or commit to any capital expenditures or any obligations or liabilities in connection therewith inconsistent with the items and amounts set forth in the Company's capital expenditure budget for fiscal 2007, a copy of which has been made available to Parent;

(e) adopt a plan or agreement of, or resolutions providing for or authorizing, complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

(f) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses, other than in the ordinary course of business of the Company and its Subsidiaries in a manner that is consistent with past practice;

(g) enter into, terminate, renew, amend or modify in any material respect or fail to enforce any Material Contract other than in the ordinary course of business consistent with past practice;

(h) sell, lease or otherwise transfer, or create or incur any Lien on, any of the Company's or its Subsidiaries' assets, securities, properties, interests or businesses, other than in the ordinary course of business consistent with past practice or Permitted Liens;

(i) other than in connection with actions permitted by Section 7.01(d), make any loans, advances or capital contributions to, or investments in, any other Person (other than a wholly-owned Subsidiary of the Company), other than in the ordinary course of business consistent with past practice;

(j) create, incur, assume, suffer to exist or otherwise be liable with respect to any Indebtedness of the Company or any of its Subsidiaries to any Person, other than to a wholly-owned Subsidiary of the Company or in the ordinary course of business consistent with past practice;

(k) (i) pay, discharge, settle or satisfy any material claims, liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than (A) claims, liabilities or obligations in the ordinary course of business consistent with past practice, (B) as required by their terms as in effect on the date of this Agreement of claims, liabilities or obligations reserved against on the Company Balance Sheet (for amounts not in excess of such reserves) or incurred since the date of such financial statements in the ordinary course of business consistent with past practice, for each of clauses (A) and (B), the payment, discharge, settlement or satisfaction of which does not include any obligation (other than the payment of money) to be performed by the Company or any of its Subsidiaries following the Closing Date, (ii) waive, relinquish, release, grant, transfer or assign any right of material value, or (iii) waive any material benefits of, or agree to modify in any adverse respect, or fail to enforce, or consent to any matter with respect to which its consent is required under, any confidentiality, standstill or similar Contract to which the Company or any of its Subsidiaries is a party and that relates to an Acquisition Proposal;

(l) (i) grant or increase any severance or termination pay to (or amend any existing arrangement relating to severance or termination pay with) any director, officer or employee of the Company or any of its Subsidiaries, (ii) increase benefits payable under any existing severance or termination pay policies or employment agreements, (iii) enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement) with any director, officer or employee of the Company or any of its Subsidiaries, (iv) establish, adopt or amend (except as required by Applicable Law) any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred

compensation, compensation, stock option, restricted stock or other benefit plan or arrangement covering any director, officer or employee of the Company or any of its Subsidiaries or (v) other than in the ordinary course of business consistent with past practice, increase compensation, bonus or other benefits payable to any director, officer or employee of the Company or any of its Subsidiaries;

(m) transfer or exclusively license to any Person or otherwise materially extend, amend or modify any rights to any Intellectual Property Rights owned by the Company or its Subsidiaries and material to the business of the Company or any of its Subsidiaries as currently conducted, other than in the ordinary course of business or pursuant to any Contract currently in place (that have been disclosed in writing to Parent prior to the date of this Agreement);

(n) other than as expressly permitted by Section 7.04, take any action for the purpose of preventing, delaying or impeding the consummation of the Merger or the other transactions contemplated by this Agreement;

(o) change the Company's methods of accounting, except as required by changes in GAAP or in Regulation S-X of the 1934 Act, as agreed to by its independent public accountants;

(p) settle, or offer or propose to settle, (i) any material litigation, investigation, arbitration, proceeding or other claim involving or against the Company or any of its Subsidiaries, (ii) any stockholder litigation or dispute against the Company or any of its officers or directors or (iii) any Proceeding or dispute that relates to the transactions contemplated hereby;

(q) make or change any Tax election, change any annual Tax accounting period, adopt or change any method of Tax accounting, materially amend any Tax Returns or file claims for material Tax refunds, enter into any closing agreement, settle any Tax claim, audit or assessment, or surrender any right to claim a material Tax refund, offset or other reduction in Tax liability;

(r) give to any Person an indemnity in connection with any Intellectual Property Right, other than indemnities (i) that, individually or in the aggregate, could not result in liability to the Company in excess of the amounts paid by such Person to the Company or any of its Subsidiaries, (ii) that arise under the standard form terms and conditions of sale of the Company or any of its Subsidiaries, copies of which are attached in Section 5.16(c) of the Company Disclosure Schedule, or (iii) that are substantially similar to the indemnities previously granted by the Company or any of its Subsidiaries to such Person or its Affiliates; or

(s) agree, resolve or commit to do any of the foregoing.

Section 7.02 . *Stockholder Meeting; Proxy Material.* If, following the consummation of the Offer (or, if applicable, any Subsequent Offering Period(s)), Stockholder Approval is required under Delaware Law to consummate the Merger, the Company shall establish a record date (which shall be the earliest practicable date following the consummation of the Offer (or, if applicable, any Subsequent Offering Period(s))) for, duly call, give notice of, convene and hold a meeting of its stockholders (the "**Stockholder Meeting**") for the purpose of submitting to the Company's stockholders the matters constituting the Stockholder Approval. In connection with such meeting, the Company shall (i) promptly prepare and file with the SEC, shall use its best efforts to have cleared by the SEC and shall thereafter mail to its stockholders as promptly as practicable the Company Proxy Statement and all other proxy materials for such meeting, (ii) subject to Section 7.04(b), use its best efforts to obtain the Stockholder Approval and (iii) otherwise comply with all legal requirements applicable to such meeting. Subject to Section 7.04(b), the proxy statement of the Company relating to the Stockholder Meeting shall include the Board Recommendation. Parent shall, following the date on which Stockholder Approval is determined to be required in accordance with this Section 7.02, promptly furnish to the Company all information concerning Parent or Merger Subsidiary as the Company may reasonably request in connection with the Company Proxy Statement.

Section 7.03 . *Access to Information.* From the date of this Agreement until the Effective Time and subject to Applicable Law and the Amended and Restated Mutual Nondisclosure Agreement dated as of May 15, 2006 between the Company and Parent and their respective Affiliates (the "**Confidentiality Agreement**"), the Company shall (i) give Parent, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of the Company and the Subsidiaries, (ii) furnish to Parent, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information as such Persons may reasonably request and (iii) instruct the employees, counsel, financial advisors, auditors and other authorized representatives of the Company and its Subsidiaries to cooperate with Parent in its investigation of the Company and its Subsidiaries; *provided*, that the Company may restrict the foregoing access to avoid the waiver or other loss of attorney client privilege, work product doctrine or any other applicable privilege. Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company and its Subsidiaries. No information or Knowledge obtained by Parent in any investigation pursuant to this Section shall affect or be deemed to modify any representation or warranty made by the Company hereunder.

Section 7.04 . *No Solicitation; Other Offers.* (a) Neither the Company nor any of its Subsidiaries shall, nor shall the Company or any of its Subsidiaries authorize or permit any of its or their officers, directors, employees, investment

bankers, attorneys, accountants, consultants or other agents or advisors (together, "**Representatives**") to, subject to Section 7.04(b):

(i) enter into or participate in any discussions or negotiations regarding an Acquisition Proposal with, or in connection with an Acquisition Proposal furnish any nonpublic information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any Third Party that such Person reasonably believes may be seeking to make, or has made, an Acquisition Proposal or has made any inquiry or indication of interest that could reasonably be expected to lead to an Acquisition Proposal,

(ii) fail to make, withdraw or modify in a manner adverse to Parent the Board Recommendation (or recommend an Acquisition Proposal) (any of the foregoing in this clause (ii), an "**Adverse Recommendation Change**"),

(iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries,

(iv) enter into any letter of intent, contract or similar document contemplating or otherwise relating to any Acquisition Proposal; or

(v) enter into or participate in any discussions or negotiations regarding any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Offer or Merger or that could reasonably be expected to dilute materially the benefits of Parent of the transactions contemplated hereby.

The Company shall instruct, and cause each applicable Subsidiary, if any, to instruct, each such Representative who has been retained or requested by the Company or any such Subsidiary to perform services in connection with this Agreement not to, directly or indirectly, solicit, initiate or take any action knowingly to facilitate or encourage the submission of any Acquisition Proposal.

(b) Notwithstanding the foregoing, the Company Board, directly or indirectly through advisors, agents or other intermediaries, may:

(i) engage in negotiations or discussions with any Third Party that, subject to the Company's compliance with Section 7.04(a), has made (and not withdrawn) a bona fide Acquisition Proposal in writing that the

Company Board in good faith believes is or is reasonably likely to lead to a Superior Proposal,

(ii) thereafter furnish to such Third Party information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with terms no less favorable to the Company than those contained in the Confidentiality Agreement and that permit the Company to comply with the terms of this Section 7.04 (a copy of which shall be promptly (in all events within 24 hours) provided for informational purposes only to Parent),

(iii) to the extent the Company Board determines in good faith by a majority vote, after considering advice from outside legal counsel to the Company, that it is so required by the Company Board's fiduciary duties under Applicable Law, make an Adverse Recommendation Change, and/or

(iv) take any non-appealable, final action that any court of competent jurisdiction orders the Company to take,

but in each case referred to in the foregoing clauses (i) through (ii) only if the Company Board determines in good faith by a majority vote, after considering advice from outside legal counsel to the Company, that failure to take such actions would be inconsistent with its fiduciary duties under Applicable Law. For purposes of clause (i) of this Section 7.04(b), the term "Acquisition Proposal" shall have the meaning ascribed to such term in Article 1, except that references to "20%" or "80%" in clauses (i) through (iv) of such definition shall be replaced with "50%". Nothing contained in this Agreement shall prevent the Company Board from complying with Rule 14e-2(a) or 14d-9 under the 1934 Act with regard to an Acquisition Proposal.

(c) The Company Board shall not take any of the actions referred to in clauses (i) through (iii) of the preceding subsection unless the Company shall have delivered to Parent a prior written notice advising Parent that it intends to take such action. In the case of any action referred to in clause (iii) in which neither the Company nor any of its advisors has received any Acquisition Proposal, such notice shall be given to Parent at least 48 hours before taking such action. In addition, the Company shall notify Parent promptly (but in no event later than 48 hours) after (i) receipt by the Company (or any of its advisors) of any Acquisition Proposal, (ii) receipt by the Company of any indication that any Third Party is considering making an Acquisition Proposal, (iii) any request for nonpublic information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries by any Third Party that the Company reasonably believes may be considering making, or has made, an Acquisition Proposal or (iv) any breach

of the obligations of the Company and its Subsidiaries set forth in Section 7.04(a). The Company shall provide such notice orally and in writing and shall identify the material terms and conditions of any such Acquisition Proposal, indication, request or breach. The Company shall keep Parent fully informed, on a reasonably current basis, of the status and details of any such Acquisition Proposal, indication or request.

(d) In addition, the Company Board shall not make an Adverse Recommendation Change in connection with an Acquisition Proposal, unless:

(i) the Company notifies Parent, in writing, at least three Business Days before making an Adverse Recommendation Change, of its intention to take such action, attaching the most current version of such proposed agreement or a detailed summary of all material terms of any such proposal and the identity of the Third Party making such Acquisition Proposal,

(ii) the Company shall have, during such three Business Day period, negotiated in good faith with Parent with respect to any changes to this Agreement that Parent shall have proposed, and

(iii) Parent does not make, within such three Business Day period, an offer that the Company Board determines is at least as favorable to the stockholders of the Company from a financial point of view as the transaction set forth in the Company's written notice delivered pursuant to clause (i) above, it being understood that the Company shall not enter into any such binding agreement during such three Business Day period.

The Company shall promptly notify Parent if its intention to make an Adverse Recommendation Change with respect to a Acquisition Proposal shall change at any time after giving a notice referred to in clause (i) above.

(e) The Company shall, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause the advisors, employees and other agents of the Company and any of its Subsidiaries to, cease immediately and cause to be terminated any and all existing activities, discussions and negotiations, if any, with any Third Party conducted prior to the date of this Agreement with respect to any Acquisition Proposal. The Company shall use its reasonable best efforts to enforce the terms and conditions of any confidentiality agreement entered into with such Third Party with respect to any Acquisition Proposal and to cause any such Third Party (or its agents or advisors) in possession of confidential information about the Company that was furnished by or on behalf of the Company to return or destroy all such information. The Company agrees that it will use its reasonable best efforts to promptly inform its directors, officers, key

employees, investment bankers, attorneys, accountants, consultants and other agents and advisors of the obligations undertaken in this Section 7.04.

Section 7.05 . *Notices of Certain Events.* The Company shall promptly notify Parent of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(c) any Proceedings commenced or, to its Knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 5.12, 5.13, 5.19 or 5.20, as the case may be, or that relate to the consummation of the transactions contemplated by this Agreement.

(d) any inaccuracy of any representation or warranty contained in this Agreement at any time during the term of this Agreement that could reasonably be expected to cause the conditions set forth in paragraph (f) of Annex I not to be satisfied; and

(e) any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

Section 7.06 . *Employee Benefits.*

(a) *ESPP.* The Company shall take all action that is necessary to (i) cause the exercise of each outstanding purchase right under the Company's Amended and Restated 2000 Employee Stock Purchase Plan (the "**ESPP**") no less than five Business Days prior to the scheduled expiration of the initial tender offer; (ii) provide that no further purchase period or offering period shall commence under the ESPP following the date of this Agreement; and (iii) conditional upon the Closing, terminate the ESPP immediately prior to and effective as of the Effective Time.

(b) *Termination of 401(k) Plan.* Unless otherwise directed in writing by Parent at least five business days prior to the consummation of the Offer, and to the extent permitted by Applicable Law, the Company will terminate any and all Employee Plans intended to qualify as a qualified cash or deferred arrangement under Section 401(k) of the Code, effective as of the day immediately preceding

the date the Company becomes a member of the same Controlled Group of Corporations (as defined in Section 414(b) of the Code) as Parent (the "**401(k) Termination Date**"). The Company shall provide Parent evidence that such resolutions to terminate the 401(k) plan(s) of the Company and its Subsidiaries have been adopted by the Company Board or the board of directors of its Subsidiaries, as applicable. The form and substance of such resolutions shall be subject to the reasonable approval of Parent. The Company shall also take such other actions in furtherance of terminating any such 401(k) plans as Parent may reasonably request. Immediately prior to the 401(k) Termination Date, the Company will make (or cause to be made) all necessary payments to fund the contributions (i) necessary or required to maintain the tax-qualified status of any such 401(k) plan and (ii) for elective deferrals made pursuant to any such 401(k) plan for the period prior to its termination. As promptly as practicable after the 401(k) Termination Date and subject to the terms of Parent's 401(k) plan, Parent shall permit all employees of the Company and its Subsidiaries who were eligible to participate in any such 401(k) plan immediately prior to the 401(k) Termination Date to participate in Parent's 401(k) plan, and to the extent permitted by the terms of the applicable plan, shall permit each continuing employee of the Company and its Subsidiaries to elect to roll over his or her account balance from any terminated 401(k) plan maintained by the Company or any of its Subsidiaries, to Parent's 401(k) plan.

(c) *Section 16*. The Company Board shall take appropriate action prior to the consummation of the initial Offer to approve, for purposes of Section 16(b) of the 1934 Act, the deemed disposition and cancellation of the Company Stock Options and Company Shares held by its officers subject to Section 16(b) of the 1934 Act in the Merger.

Section 7.07 . *FIRPTA Certification.* The Company shall deliver (a) a certification dated not more than 30 days prior to the date of the consummation of the Offer and (b) to the extent necessary in light of the certification delivered pursuant to clause (a), an additional certification dated not more than 30 days prior to the Effective Time, in each case signed by the Company and to the effect that the Company Shares are not "United States real property interests" within the meaning of Section 897 of the Code.

Section 7.08 . *Indemnities*. The Company shall deliver to Parent (a) a certification dated not more than 10 Business Days prior to the Effective Time that lists the indemnities granted by the Company to any Person between the date of this Agreement and the date of such certification, which indemnities satisfy the conditions of Section 7.01(r)(iii) and do not satisfy the conditions of Section 7.01(r)(i) or Section 7.01(r)(ii), and (b) a copy of the indemnities listed in such certification concurrently with such certification.

Section 7.09 . *Specified Software.* The Company shall use its reasonable best efforts to ensure that, prior to the Effective Time, either (i) the software and other Intellectual Property Rights licensed to the Company pursuant to the Specified Software Agreement (as defined in Section 7.09 of the Company Disclosure Schedule) are replaced with software and/or Intellectual Property Rights providing substantially similar functionality or (ii) the Company's license under the Specified Software Agreement is renewed such that it will expire no earlier than the date that is 12 months after the Effective Time, in each case on terms and conditions no less favorable to the Company than those provided by the Specified Software Agreement prior to December 31, 2006.

ARTICLE 8
Covenants of Parent

Parent agrees that:

Section 8.01 . *Obligations of Merger Subsidiary.* Parent shall cause Merger Subsidiary to timely perform its obligations under this Agreement, including the commencement and consummation of the Offer and the Merger, on the terms and conditions set forth in this Agreement.

Section 8.02 . *Voting of Shares.* Parent shall vote or cause to be voted all Tender Shares beneficially owned by it or any of its Subsidiaries in favor of adoption of this Agreement at the Stockholder Meeting.

Section 8.03 . *Director and Officer Liability*. Parent shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to do the following:

(a) All rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors or officers of the Company and its Subsidiaries (each, an "**Indemnified Person**") as provided in their respective certificates of incorporation or bylaws (or comparable organizational documents) and any indemnification or other agreements of the Company as in effect on the date of this Agreement (copies of which have been made available to Parent prior to the date of this Agreement) shall be assumed by the Surviving Corporation in the Merger, without further action, at the Effective Time, and shall survive the Merger and shall continue in full force and effect in accordance with their terms, and Parent shall cause the Surviving Corporation to comply with and honor the foregoing obligations; *provided* that such obligations shall be subject to any limitation imposed from time to time under Applicable Law.

(b) Prior to the Effective Time, notwithstanding anything to the contrary set forth in this Agreement, the Company may purchase a "tail" officers' and directors' liability insurance policy, which by its terms shall survive the Merger and shall provide each Indemnified Person with coverage for six (6) years following the Effective Time on terms and conditions no less favorable than the Company's existing officers' and directors' liability insurance, provided that the aggregate premium for such tail policy is not greater than 350% of the annual premium paid by the Company for such existing insurance, and provided, further, that if such 350% of the annual premium paid by the Company for such existing insurance is not sufficient for such coverage, the Company may, at its option, spend up to that amount to purchase such lesser coverage as may be obtained with such amount. If the Company elects to purchase such a tail policy, it shall give notice to Parent of such election, which notice shall include the price and all other material terms of such proposed policy, and Parent shall, if Parent gives the Company notice within three Business Days of the receipt of such notice from the Company, purchase a tail policy (which policy shall provide each Indemnified Person with coverage for six (6) years following the Effective Time on terms and conditions no less favorable than the Company's existing officers' and directors' liability insurance) in lieu of the tail policy proposed by the Company. If Parent or the Company shall purchase such a tail policy prior to the Effective Time, Parent and the Surviving Corporation shall maintain such tail policy in full force and effect and continue to honor their respective obligations thereunder for the full term thereof.

(c) If Parent, the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 8.03.

(d) The rights of each Indemnified Person under this Section 8.03 shall be in addition to any rights such Person may have under the certificate of incorporation or bylaws of the Company or any of its Subsidiaries, under Delaware Law or any other Applicable Law or under any agreement of any Indemnified Person with the Company or any of its Subsidiaries. Parent shall (and shall cause the Surviving Corporation and its Subsidiaries to) cause the certificate of incorporation and bylaws (and other similar organizational documents) of the Surviving Corporation and its Subsidiaries to contain provisions with respect to indemnification, advancement of expenses and exculpation that are at least as favorable to the Indemnified Persons as the indemnification, advancement of expenses and exculpation provisions contained in the certificate of incorporation and bylaws (or other similar organizational documents) of the Company and its Subsidiaries immediately prior to the date of

this Agreement, and such provisions shall not be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of individuals who were covered by such provisions, except as required by Applicable Law. The rights under this Section 8.03 shall survive consummation of the Merger and are intended to benefit, and shall be enforceable by, each Indemnified Person.

Section 8.04 . *Benefit Plan Participation.* From and after the Effective Time, subject to the terms of Parent's current employee benefit plans, Parent shall provide, or shall cause the Surviving Corporation to provide, to each employee of the Company and its Subsidiaries who continues employment with Parent or the Surviving Corporation after the Effective Time (collectively, the "**Continuing Employees**") employee benefits that are no less favorable than those Parent provides to its own similarly-situated employees. To the extent permitted under Parent's employee benefit plans, Parent shall provide each Continuing Employee with credit for purposes of eligibility to participate and vesting under Parent's plans for years of service with the Company (or any of its Subsidiaries) prior to the Effective Time. To the extent permitted under Parent's employee benefit plans and subject to any third party insurer's consent, Parent will cause any and all pre-existing condition limitations, eligibility waiting periods and evidence of insurability requirements under any group health plans of Parent in which such employees and their eligible dependents will participate to be waived (to the extent not applicable under the Company's employee benefit plans) and will provide credit for any co-payments and deductibles prior to the Effective Time but in the plan year which includes the Effective Time for purposes of satisfying any applicable deductible, out-of-pocket or similar requirements under any such plans that may apply for such plan year after the Effective Time.

Section 8.05 . *HSR Act.* Parent shall promptly inform the Company if it determines that Parent or Merger Subsidiary is required to make any filing pursuant to the HSR Act in connection with this Agreement or the transactions contemplated hereby.

ARTICLE 9
Covenants of Parent and the Company

The parties hereto agree that:

Section 9.01 . *Reasonable Efforts*. (a) Subject to the terms and conditions of this Agreement, the Company and Parent shall use their reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any governmental authority or other third party all

documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents, and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any governmental authority or other third party, including through communications with customers of the Company, in each case which are necessary, proper or advisable to consummate the transactions contemplated by this Agreement. Each of the Company and Parent shall not take or omit to take any actions that would reasonably be likely to result in the failure or material delay of clause (ii) above or any of the conditions described in paragraphs (a), (b), (c) or (d) of Annex I. The Company and Parent shall cooperate with each other in connection with the making of all such filings, including providing copies of all such documents to the non-filing party and its advisors prior to filing and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith. The Company and Parent shall use their respective reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to the rules and regulations of any Applicable Law in connection with the transactions contemplated by this Agreement. In furtherance and not in limitation of the foregoing, Parent shall make appropriate filings pursuant to Applicable Competition Laws with respect to the transactions contemplated hereby as promptly as practicable (and with respect to any applicable pre-merger notification requirements in Germany, within 5 Business Days of the date of this Agreement, and with respect to any applicable pre-merger notification requirements in China and Taiwan, within 10 Business Days of the date of this Agreement) and shall supply as promptly as practicable any additional information and documentary material that may be requested pursuant to such Applicable Competition Laws and use reasonable efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under those Applicable Competition Laws as soon as practicable, and the Company shall cooperate with all reasonable requests of Parent in connection with such filings, supply of information and materials, and other actions.

(b) Each of Parent and the Company shall (i) promptly notify the other party hereto of any written or oral communication to that party or its Affiliates from any Governmental Authority, and of any Proceeding of any Governmental Authority commenced or, to its Knowledge, threatened against, relating to or involving that party or its Affiliates, (ii) keep the other party reasonably informed of any substantive meeting or discussion with any Governmental Authority in respect of any filing, investigation or inquiry concerning this Agreement or the transactions contemplated hereby, (iii) subject to all applicable privileges, including the attorney client privilege, furnish the other party with copies of all correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their Affiliates and their respective Representatives, on the one hand, and any Governmental Authority or members

of their respective staffs, on the other hand, in each case referred to in the foregoing clauses (i) through (iii) concerning this Agreement and the transactions contemplated hereby, and (iv) promptly notify the other party of any fact, circumstance, change or effect that could reasonably be expected to prevent Parent's ability to timely purchase all of the Company Shares pursuant to the Offer and to make the payments in respect of Company Stock Options required by Section 3.06(b) hereof.

(c) Notwithstanding anything to the contrary herein, nothing in this Agreement shall require Parent or any of its Subsidiaries to, nor shall the Company or any of its Subsidiaries without the prior written consent of Parent agree or offer to: (i) effect any divestiture of, or hold separate (including by establishing a trust or otherwise), or agree to restrict its ownership or operation of, any business or assets of the Company or its Subsidiaries or of Parent or its Subsidiaries, or to enter into any settlement or consent decree, or agree to any undertaking, with respect to any business or assets of the Company or its Subsidiaries or of Parent or its Subsidiaries, (ii) enter into, amend or agree to enter into or amend, any Contracts of the Company or its Subsidiaries or of Parent or its Subsidiaries, (iii) otherwise waive, abandon or alter any rights or obligations of the Company or its Subsidiaries or of Parent or its Subsidiaries or (iv) file or defend any lawsuit or legal proceeding, appeal any judgment or order or contest any injunction issued in a Proceeding initiated by a Governmental Authority, except in the case of clauses (i) through (iii) as would not, individually or in the aggregate, materially diminish the benefits that would reasonably be expected to accrue to Parent from the Merger or the consummation of the transactions contemplated hereby.

Section 9.02 . *Certain Filings*. The Company and Parent shall cooperate with one another (i) in connection with the preparation of the Company Disclosure Documents and the Offer Documents, (ii) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (iii) in taking such actions or making any such filings, furnishing information required in connection therewith or with the Company Disclosure Documents or the Offer Documents and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 9.03 . *Public Announcements*. Parent and the Company shall consult with each other before issuing any press release or making any other public statement, or scheduling any press conference or conference call with investors or analysts, with respect to this Agreement or the transactions contemplated hereby and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange, shall not issue

any such press release or make any such other public statement or schedule any such press conference or conference call before such consultation.

Section 9.04 . *Further Assurances.* At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or Merger Subsidiary, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Subsidiary, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 9.05 . *Merger Without Meeting of Stockholders.* If Parent, Merger Subsidiary or any other Subsidiary of Parent shall acquire at least 90% of the Tender Shares pursuant to the Offer or otherwise, Parent shall take all necessary and appropriate action to cause the Merger to be effective as soon as practicable after the acceptance for payment and purchase of Tender Shares pursuant to the Offer without the Stockholder Meeting in accordance with Section 253 of Delaware Law.

ARTICLE 10
Conditions to the Merger

Section 10.01 . *Conditions to the Obligations of Each Party.* The obligations of the Company, Parent and Merger Subsidiary to consummate the Merger are subject to the satisfaction of the following conditions:

(a) if required by Delaware Law, the Stockholder Approval shall have been obtained;

(b) no Applicable Law shall prohibit the consummation of the Merger; and

(c) Merger Subsidiary shall have purchased the Tender Shares pursuant to the Offer.

ARTICLE 11
Termination

Section 11.01 . *Termination*. This Agreement may be terminated and the Offer may be abandoned at any time prior to the acceptance of the Tender Shares pursuant to the Offer:

(a) by mutual written agreement of the Company and Parent;

(b) by either the Company or Parent, if any Applicable Law has been enacted or issued that (i) makes acceptance for payment of, and payment for, the Tender Shares pursuant to the Offer or consummation of the Merger illegal or otherwise prohibited or (ii) enjoins Merger Subsidiary from accepting for payment, and paying for, the Tender Shares pursuant to the Offer or the Company or Parent from consummating the Merger and, in respect of an order, injunction, judgment, judicial decision, decree or ruling under clause (i) or (ii) above, which shall have become final and nonappealable;

(c) by either the Company or Parent, if the Offer has not been consummated by July 7, 2007 (the "**End Date**"); *provided* that the right to terminate this Agreement pursuant to this Section 11.01(c) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Offer to be consummated by such date;

(d) by Parent, if there is an inaccuracy in the Company's representations and warranties herein, or a breach by the Company of its covenants herein, in either case such that Merger Subsidiary's related condition to the consummation of the Offer as set forth in Annex I would fail to be satisfied, and such inaccuracy or breach is not cured within 30 days after notice thereof and is not reasonably likely to be cured prior to the End Date;

(e) by Parent, if an Adverse Recommendation Change shall have occurred or the Company shall have willfully and materially breached its obligations under Section 7.03 or Section 7.04;

(f) by Parent, if there shall have occurred any change, development or event such that the conditions set forth in clause (e) of Annex I would fail to be satisfied;

(g) by the Company, if the Company Board authorizes the Company, subject to complying with the terms of this Agreement, to enter into a written agreement concerning a Superior Proposal; *provided*, that the Company shall have paid any amounts due pursuant to Section 12.04(b) in accordance with the terms, and at the times, specified therein; and *provided further*, that, in the case of any termination by the Company pursuant to this clause (g), (A) the Company notifies Parent, in writing and at least 72 hours prior to such termination (which notice may be given concurrently with any notice contemplated by Section 7.04(d)), of its intention to terminate this Agreement and to enter into a binding written agreement concerning an Acquisition Proposal that constitutes a Superior Proposal, attaching the most current version of such agreement or a detailed summary of all material terms and conditions thereof and the identity of the Third Party making such Superior Proposal, and (B) Parent does not make, within three

Business Days of receipt of such written notification, a binding offer that Company Board determines, in good faith after considering the advice of its outside legal counsel and of a financial advisor of nationally recognized reputation, is as favorable or more favorable to the stockholders of the Company as such Superior Proposal, it being understood that the Company shall not enter into any such binding agreement during such three Business Day period; or

(h) by the Company, at any time following March 7, 2007, if any of the conditions set forth in clauses (a), (b), (c) or (d) of Annex I (the "**Regulatory Conditions**") is not satisfied; *provided* that the Company's right to terminate this Agreement pursuant to this Section 11.01(h) shall not be available if the Company's material breach of any provision of this Agreement results in the failure of the Offer to be consummated by such date.

The party desiring to terminate this Agreement pursuant to this Section 11.01 (other than pursuant to Section 11.01(a)) shall give written notice of such termination to the other party.

Section 11.02 . *Effect of Termination.* If this Agreement is terminated pursuant to Section 11.01, this Agreement shall become void and of no effect with no liability on the part of any party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party hereto; *provided* that, if such termination shall result from the willful (i) failure of either party to fulfill a condition to the performance of the obligations of the other party or (ii) failure of either party to perform a covenant hereof, such party shall be fully liable for any and all liabilities and damages incurred or suffered by the other party as a result of such failure. The provisions of Sections 12.04, 12.07, 12.08, 12.09 and 12.10 and of the Confidentiality Agreement shall survive any termination hereof pursuant to Section 11.01.

ARTICLE 12
Miscellaneous

Section 12.01 . *Notices*. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Parent or Merger Subsidiary, to:

KLA-Tencor Corporation
160 Rio Robles
San Jose, California 95134
Attention: Chief Financial Officer
Facsimile No.: (408) 875-3030

with a copy to:

Davis Polk & Wardwell
1600 El Camino Real
Menlo Park, California 94025
Attention: William M. Kelly
Facsimile No.: (650) 752-2111

if to the Company, to:

Therma-Wave, Inc.
1250 Reliance Way
Fremont, California 94539
Attention: Chief Financial Officer
Facsimile No.: (510) 656-3852

with a copy to:

Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94304
Attention: Michael Phillips
Michael O'Bryan
Facsimile No.: (650) 494-0792

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 12.02 . *Survival of Representations and Warranties.* The representations, warranties and agreements contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time, except as set forth in the Confidentiality Agreement.

Section 12.03 . *Amendments and Waivers*. (a) Any provision of this Agreement may be amended or waived prior to the Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; *provided* that, after the Stockholder Approval and without their further approval, no such amendment or waiver shall reduce the amount or change the kind of consideration to be received in exchange for the Company Shares.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 12.04 . *Expenses*. (a) Except as otherwise provided herein, each party will bear its own expenses incurred in connection with the preparation, execution and performance of the transactions contemplated hereby, including, but not limited to, all fees and expenses of agents, representatives, counsel, financial advisors and accountants.

(b) If a Payment Event (as hereinafter defined) occurs, the Company shall pay to Parent (by wire transfer of immediately available funds), if, pursuant to clause (v) below, simultaneously with the occurrence of such Payment Event or, in any other case, within two Business Days following such Payment Event, a fee of $3.69 million.

"**Payment Event**" means the termination of this Agreement by:

(i) Parent or the Company pursuant to Section 11.01(c) and each of the Regulatory Conditions has been satisfied,

(ii) Parent as a result of a breach by the Company of a covenant hereunder pursuant to Section 11.01(d),

(iii) the Company pursuant to Section 11.01(h),

(iv) Parent pursuant to Section 11.01(e) or

(v) the Company pursuant to Section 11.01(g),

but in each of clauses (i) through (iii), only if (A) at the time of such termination an Acquisition Proposal (other than any nonpublic inquiry) has been received by the Company or an Acquisition Proposal has been publicly announced and such proposal has not been withdrawn and (B) within 12 months following the date of such termination, the Company enters into an agreement contemplating, or consummates, a transaction in which (1) the Company merges with or into, or is acquired, directly or indirectly, by merger or otherwise by, a Third Party as a result of which the holders of the Company's equity securities immediately prior to the consummation of such transaction shall hold less than 50% of the voting power of the Company (or other surviving or resulting entity) following the transaction; (2) a Third Party, directly or indirectly, acquires more than 50% of the total assets of the Company and its Subsidiaries, taken as a whole; (3) a Third

Party, directly or indirectly, acquires more than 50% of the outstanding Company Shares; or (4) the Company adopts or implements a plan of liquidation, recapitalization or share repurchase relating to more than 50% of the outstanding Company Shares.

(c) In the event that Parent or the Company terminates this Agreement pursuant to Section 11.01(c) and the sole reason that the transaction has not been consummated by the End Date is that one or more of the Regulatory Conditions has not been satisfied (but without regard to the satisfaction of the Minimum Tender Condition or the delivery of the certificates of the Company described in clauses (f) and (g) of Annex I), Parent shall pay to the Company (by wire transfer of immediately available funds), within two Business Days following such termination, a fee of $2.21 million.

(d) Each of Parent and the Company acknowledges that the agreements contained in this Section 12.04 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the other party would not enter into this Agreement. Accordingly, if either such party fails promptly to pay any amount due to the other party pursuant to this Section 12.04, it shall also pay any costs and expenses incurred by such other party in connection with a legal action to enforce this Agreement that results in a judgment against such party for such amount. Payment of the fees described in this Section 12.04 shall be in lieu of damages incurred in the event of breach of this Agreement, except for willful breaches.

Section 12.05 . *Disclosure Schedule References.* The parties hereto agree that any reference in a particular Section of the Company Disclosure Schedule shall be deemed to be an exception only to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the Company that are contained in the corresponding Section of this Agreement and (b) any other representations and warranties of the Company that are contained in this Agreement, but only if the relevance of that reference as an exception to (or a disclosure for purposes of) such representations and warranties would be reasonably apparent to a reasonable person who has read that reference and such representations and warranties, without any independent knowledge on the part of the reader regarding the matter(s) so disclosed.

Section 12.06 . *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and, except as provided in Section 8.03, shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto, except that each of Parent and Merger Subsidiary may transfer or assign

its rights and obligations under this Agreement, in whole or from time to time in part, to (i) one or more of its Affiliates at any time and (ii) after the acceptance for payment and payment of the Tender Shares pursuant to the Offer to any Person; *provided* that such transfer or assignment shall not relieve Parent or Merger Subsidiary of its obligations under the Offer, enlarge, alter or change any obligation of any other party hereto or due to Parent or Merger Subsidiary or prejudice the rights of tendering stockholders to receive payment for Tender Shares validly tendered and accepted for payment pursuant to the Offer.

Section 12.07 . *No Third Party Beneficiaries.* Except as provided in Section 8.03, no provision of this Agreement is intended to, and no provision of this Agreement shall, confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 12.08 . *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 12.09 . *Jurisdiction.* The parties hereto agree that any Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the State of Delaware or any Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any Proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such Proceeding in any such court or that any such Proceeding brought in any such court has been brought in an inconvenient forum. Process in any such Proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.01 shall be deemed effective service of process on such party.

Section 12.10 . *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.11 . *Counterparts; Effectiveness*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and

unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 12.12 . *Entire Agreement.* This Agreement, together with the Tender and Support Agreement and the Confidentiality Agreement, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 12.13 . *Severability*. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 12.14 . *Specific Performance.* The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or any Delaware state court, in addition to any other remedy to which they are entitled at law or in equity.

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

KLA-TENCOR CORPORATION

By: /s/ Jeffrey L. Hall
Name: Jeffrey L. Hall
Title: Chief Financial Officer

FENWAY ACQUISITION CORPORATION

By: /s/ Jeffrey L. Hall
Name: Jeffrey L. Hall
Title: President

THERMA-WAVE, INC.

By: /s/ Boris Lipkin
Name: Boris Lipkin
Title: President and CEO

[Signature Page to Agreement and Plan of Merger]

Subject to the terms and conditions of the Agreement, Merger Subsidiary shall not be required to accept for payment or pay for any Tender Shares, and may terminate the Offer, if at the expiration of the Offer, (1) the Minimum Condition shall not have been satisfied or (2) any of the following conditions shall not have been satisfied and such non-satisfaction shall be continuing:

(a) Applicable Competition Law. Any waiting period under any Applicable Competition Law that is required in connection with the Offer shall have expired or have been terminated.

(b) Governmental Approval. Parent, the Company and Merger Subsidiary and their respective Subsidiaries shall have timely obtained from each Governmental Authority all material approvals, waivers and consents, if any, necessary for consummation of or in connection with the Merger and the other transactions contemplated by the Agreement.

(c) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition prohibiting the consummation of the Offer or the Merger shall be in effect; nor shall any Applicable Law be enacted, entered or enforced which prohibits the consummation of the Offer or the Merger.

(d) No Governmental Proceedings. No suit, action, litigation, or proceeding brought by any Governmental Authority shall be pending (i) challenging or seeking to make illegal, to delay materially or otherwise to restrain or prohibit the consummation of the Offer or the Merger, (ii) seeking to restrain or prohibit Parent's or Merger Subsidiary's ownership or operation (or that of their respective Subsidiaries or Affiliates) of all or any material portion of the business or assets of the Company and its Subsidiaries, taken as a whole, or of Parent and its Subsidiaries, taken as a whole, or to compel Parent or any of its Subsidiaries or Affiliates to dispose of or hold separate all or any material portion of the business or assets of the Company and its Subsidiaries, taken as a whole, or of Parent and its Subsidiaries, taken as a whole.

(e) Material Adverse Effect. No change shall have occurred since the date of the Agreement that has a Material Adverse Effect.

(f) Representations and Warranties. The Specified Company Representations shall in each case be true and correct (other than in *de minimis* respects) as of the date of the Agreement and as of the expiration of the Offer as though made as of the expiration of the Offer, except to the extent such representations and warranties are expressly made only as of an earlier date, in

which case as of such earlier date. The Other Company Representations shall in each case be true and correct as of the date of the Agreement and as of the expiration of the Offer as though made as of the expiration of the Offer, except to the extent any Other Company Representations are expressly made only as of an earlier date, in which case as of such earlier date; *provided* that, if any of the Other Company Representations shall not be true and correct (for this purpose disregarding any qualification or limitation as to materiality or Material Adverse Effect), then the condition stated in this clause shall be deemed satisfied if and only if the cumulative effect of all inaccuracies of such representations and warranties (for this purpose disregarding any qualification or limitation as to materiality or Material Adverse Effect) do not have a Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to the foregoing effect.

(g) Series B Convertible Preferred Shares. All of the issued and outstanding Series B Convertible Preferred Shares shall have been validly tendered in accordance with the terms of the Offer, prior to the scheduled expiration date of the Offer (as it may be extended pursuant to the Agreement) and not withdrawn.

(h) Performance of Covenants and Obligations of the Company. The Company shall have performed in all material respects its covenants and obligations required to be performed by it under the Agreement at or prior to the expiration of the Offer, and Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to such effect.

(i) Definitive Agreement. The Agreement shall be in full force and effect and shall not have been terminated.

ANNEX II

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

THERMA-WAVE, INC.

FIRST: The name of the corporation is Therma-Wave, Inc. (the "**Corporation**").

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("**Delaware Law**").

FOURTH: The total number of shares of common stock which the Corporation shall have authority to issue is 1,000, and the par value of each such share is $0.001.

FIFTH: The Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation.

SIXTH: Election of directors need not be by written ballot unless the bylaws of the Corporation so provide.

SEVENTH: The Corporation expressly elects not to be governed by Section 203 of Delaware Law.

EIGHTH: (1) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law.

(2)(a) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership,

joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this ARTICLE EIGHTH shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware Law. The right to indemnification conferred in this ARTICLE EIGHTH shall be a contract right.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(3) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law.

(4) The rights and authority conferred in this ARTICLE EIGHTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(5) Neither the amendment nor repeal of this ARTICLE EIGHTH, nor the adoption of any provision of this Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this ARTICLE EIGHTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

NINTH: The Corporation reserves the right to amend this Certificate of Incorporation in any manner permitted by Delaware Law and, with the sole exception of those rights and powers conferred under the above ARTICLE EIGHTH, all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

SCHEDULE I

Company's Knowledge

Kent Buller
Clay Cottingham
Mike Darby
Ellen Fields-Sischka
Boris Lipkin
John Mathews
Lena Nicolaides
Jon Opsal
Joe Passarello
Brian Renner
Alex Salnik
Noel Simmons
Raul Tan

Exhibit (d)(2)

TENDER AND SUPPORT AGREEMENT

TENDER AND SUPPORT AGREEMENT (this "**Agreement**") dated as of January 7, 2007 between KLA Tencor Corporation, a Delaware corporation ("**Parent**"), Fenway Acquisition Corporation, a Delaware corporation and wholly-owned subsidiary of Parent ("**Merger Subsidiary**"), Therma-Wave, Inc., a Delaware corporation (the "**Company**"), and the parties listed on Annex I and Annex II (each, a "**Securityholder**"), each an owner of the Company Shares, Series B Convertible Preferred Stock and/or Series B Warrants of the Company.

WHEREAS, as of the date hereof, each Securityholder on Annex I is the holder of the number of Company Shares set forth opposite such Securityholder's name (all such directly owned Company Shares that are outstanding as of the date hereof, together with any Company Shares that are hereafter issued to or otherwise acquired or owned by any Securityholder prior to the termination of this Agreement (including pursuant to any exercise of Company Stock Options or exercise or conversion of the Series B Convertible Preferred Stock, Series B Warrants or other Company Convertible Securities, acquisition by purchase, or stock dividend, distribution, split-up, recapitalization, combination or similar transaction, the "**Subject Company Shares**"));

WHEREAS, as of the date hereof, each Securityholder on Annex II holding shares of Series B Convertible Preferred Stock is the holder of the number of shares of Series B Convertible Preferred Stock set forth opposite such holder's name (the Series B Convertible Preferred Stock together with the Subject Company Shares, the "**Subject Shares**");

WHEREAS, as a condition to their willingness to enter into the Agreement and Plan of Merger (the "**Merger Agreement**") dated as of the date hereof among Parent, Merger Subsidiary and the Company, Parent and Merger Subsidiary have required that each Securityholder, and in order to induce Parent and Merger Subsidiary to enter into the Merger Agreement each Securityholder (only in such Securityholder's capacity as a holder of the Subject Shares) has agreed to, enter into this Agreement; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement, and the other definitional and interpretative provisions set forth in Section 1.02 of the Merger Agreement shall apply hereto as if such provisions were set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE 1
Agreement to Tender

Section 1.01. *Agreement to Tender.* (a) Each Securityholder shall validly tender or cause to be tendered in the Offer all of such Securityholder's Subject Shares pursuant to and in accordance with the terms of the Offer. As promptly as practicable, but in any event no later than three Business Days after receipt by such Securityholder of all documents or instruments required to be delivered pursuant to the terms of the Offer, including but not limited to the letter of transmittal, each Securityholder shall (i) deliver to the depositary designated in the Offer (the "**Depositary**") (A) a letter of transmittal with respect to its Subject Shares complying with the terms of the Offer, (B) a certificate or certificates representing such Subject Shares or an "agent's message" (or such other evidence, if any, of transfer as the Depositary may reasonably request) in the case of a book-entry transfer of any uncertificated Subject Shares and (C) all other documents or instruments required to be delivered by other stockholders of the Company pursuant to the terms of the Offer, and/or (ii) instruct its broker or such other Person that is the holder of record of any Subject Shares beneficially owned by such Securityholder to tender such Subject Shares pursuant to and in accordance with the terms of the Offer. Each Securityholder agrees that once its Subject Shares are tendered by such Securityholder will not withdraw any of such Subject Shares from the Offer, unless and until (i) the Offer shall have been terminated by Merger Subsidiary in accordance with the terms of the Merger Agreement or (ii) this Agreement shall have been terminated in accordance with Section 5.03.

Section 1.02. *Merger Consideration.* Any amount of Merger Consideration paid for each Company Share in excess of the Offer Price must be paid, promptly after the Effective Time, to each Securityholder in respect of such Securityholder's Subject Shares.

ARTICLE 2
Representations and Warranties of the Securityholders

Each Securityholder represents and warrants to Parent and Merger Subsidiary as to itself, severally and not jointly, that:

Section 2.01. *Authorization; Binding Agreement.* If such Securityholder is not a natural Person, such Securityholder is a business entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and the execution, delivery and performance by such Securityholder of this Agreement and the consummation of the transactions contemplated hereby are within such Securityholder's corporate or organizational powers and have

been duly authorized by all necessary corporate or organizational actions on the part of such Securityholder. If such Securityholder is a natural Person, the execution, delivery and performance by such Securityholder of this Agreement and the consummation of the transactions contemplated hereby are within his or her legal capacity and requisite powers, and if this Agreement is being executed in a representative or fiduciary capacity, the Person signing this Agreement has full power and authority to execute, deliver and perform this Agreement. This Agreement constitutes a valid and binding agreement of such Securityholder enforceable against such Securityholder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar Applicable Law affecting creditors' rights generally and by general principles of equity.

Section 2.02. *Non-Contravention.* The execution, delivery and performance by such Securityholder of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate any certificate of incorporation, bylaws or other organizational documents of such Securityholder, (ii) violate any Applicable Law applicable to such Securityholder, (iii) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration or to a loss of any benefit to which such Securityholder is entitled under any provision of any agreement or other instrument binding on such Securityholder or (iv) result in the imposition of any Lien on any asset of such Securityholder, in the case of each of clauses (ii) through (iv) such as would impair or adversely affect such Securityholder's ability to perform its obligations hereunder. No governmental licenses, authorizations, permits, consents or approvals are required in connection with the execution and delivery of this Agreement by such Securityholder or the consummation by such Securityholder of the transactions contemplated hereby, except for applicable requirements, if any, under the 1934 Act and any other applicable U.S. state or federal securities laws and for such licenses, authorizations, permits, consents or approvals the absence of which would not impair or adversely affect such Securityholder's ability to perform its obligations hereunder.

Section 2.03. *Ownership of Subject Shares; Total Shares.* Such Securityholder is the record or beneficial owner (as defined in Rule 13d-3 under the 1934 Act) of its Subject Shares and, as of the date of Merger Subsidiary's acceptance of the Tender Shares in the Offer, such Subject Shares will be free and clear of any Lien and any other limitation or restriction (including any restriction on the right to vote or otherwise transfer such Subject Shares), except as provided hereunder or pursuant to any applicable restrictions on transfer under the 1933 Act. As of the date hereof, such Securityholder does not own, beneficially or otherwise, any Company Securities other than (x) as set forth opposite such Securityholder's name in Annex I and Annex II, as applicable, (y) the Company Stock Options set forth opposite such Securityholder's name on Section 5.05(b) of

the Company Disclosure Schedule and (z) the Company Shares issuable upon the exercise or conversion of such Securityholder's Company Stock Options, Series B Convertible Preferred Stock or Series B Warrants.

Section 2.04. *Voting Power*. Such Securityholder has full voting power, with respect to its Subject Shares, and full power of disposition, full power to issue instructions with respect to the matters set forth herein, and full power to agree to all of the matters set forth in this Agreement, in each case with respect to all of its Subject Shares. None of such Securityholder's Subject Shares are subject to any voting trust or other agreement or arrangement with respect to the voting of such shares, except as provided hereunder.

Section 2.05. *Finder's Fees.* Except as provided in the Merger Agreement, no investment banker, broker, finder or other intermediary is entitled to a fee or commission from the Company or any of its Subsidiaries in connection with the transactions contemplated by the Merger Agreement or this Agreement based upon any arrangement or agreement made by or on behalf of such Securityholder.

Section 2.06. *Reliance by Parent.* Such Securityholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon such Securityholder's execution and delivery of this Agreement.

Section 2.07. *Receipt of Notice.* Such Securityholder has received any notice from the Company required to be made to such Securityholder in connection with the Merger Agreement or the transactions contemplated thereby and hereby waives any rights such Securityholder may have against the Company with respect to the Company's failure to timely provide any such notice.

ARTICLE 3
Additional Covenants of the Securityholders

Subject to Section 5.15, each Securityholder hereby covenants and agrees as to itself, severally and not jointly, that:

Section 3.01. *Voting of Subject Shares.* (a) At every meeting of the stockholders of the Company called, and at every adjournment or postponement thereof, such Securityholder shall, or shall cause the holder of record on any applicable record date to, vote its Subject Shares (to the extent that any of such Securityholder's Subject Shares are not purchased in the Offer) (i) in favor of the adoption of the Merger Agreement and the transactions contemplated thereby, (ii) against (A) any agreement or arrangement related to any Acquisition Proposal, (B) any liquidation, dissolution, recapitalization, extraordinary dividend or other significant corporate reorganization of the Company or any of its Subsidiaries or

(C) any other transaction the consummation of which would reasonably be expected to impede, interfere with, prevent or materially delay the Offer or the Merger or that would reasonably be expected to dilute materially the benefits to Parent of the transactions contemplated by the Merger Agreement and (iii) in favor of any other matter necessary for consummation of the transactions contemplated by the Merger Agreement, which is considered at any such meeting of stockholders, and in connection therewith to execute any documents reasonably requested by Parent which are necessary or appropriate in order to effectuate the foregoing.

(b) Each Securityholder shall retain at all times the right to vote such Securityholder's Subject Shares in such Securityholder's sole discretion and without any other limitation on those matters other than those set forth in Section 3.01(a) that are at any time or from time to time presented for consideration to the Company's stockholders generally.

Section 3.02. *Irrevocable Proxy.* In order to secure the performance of such Securityholder's obligations under this Agreement, by entering into this Agreement, such Securityholder hereby irrevocably grants a proxy appointing each executive officer of Parent as such Securityholder's attorney-in-fact and proxy, with full power of substitution, for and in its name, to vote, express consent or dissent, or otherwise to utilize such voting power in the manner contemplated by Section 3.01 as such attorney-in-fact and proxy, in its sole discretion, deems proper with respect to such Securityholder's Subject Shares. The proxy granted by such Securityholder pursuant to this Section 3.02 shall be revoked automatically, without any notice or other action by any Person, upon termination of this Agreement in accordance with its terms. Such Securityholder hereby revokes any and all previous proxies granted with respect to its Subject Shares.

Section 3.03. *No Transfers; No Inconsistent Arrangements.* (a) Except as provided hereunder or under the Merger Agreement, such Securityholder shall not, directly or indirectly, (i) transfer (which term shall include any sale, assignment, gift, pledge, hypothecation or other disposition), or consent to or permit any such transfer of, any or all of its Subject Shares, or any interest therein, or create or permit to exist any Lien, other than any restrictions imposed by Applicable Law or pursuant to this Agreement, on any such Subject Shares, (ii) enter into any Contract with respect to any transfer of such Subject Shares or any interest therein, (iii) grant or permit the grant of any proxy, power of attorney or other authorization in or with respect to such Subject Shares, (iv) deposit or permit the deposit of such Subject Shares into a voting trust or enter into a voting agreement or arrangement with respect to such Subject Shares or (v) take or permit any other action that would in any way restrict, limit or interfere with the performance of its obligations hereunder or the transactions contemplated hereby

or otherwise make any representation or warranty of each Securityholder herein untrue or incorrect.

(b) Any attempted transfer of Subject Shares, or any interest therein, in violation of this Section 3.03 shall be null and void. In furtherance of this Agreement, such Securityholder shall and hereby does authorize the Company and Merger Subsidiary's counsel to notify the Company's transfer agent that there is a stop transfer restriction with respect to all of its Subject Shares (and that this Agreement places limits on the voting and transfer of its Subject Shares); provided that any such stop transfer restriction shall terminate automatically, without any notice or other action by any Person, upon the termination of this Agreement in accordance with Section 5.03 and, upon such event, Parent or the Company shall promptly notify the Company's transfer agent of such termination.

Section 3.04. *No Solicitation; Other Offers.* Such Securityholder hereby agrees to comply with the obligations imposed on the Company's Representatives pursuant to Section 7.04 of the Merger Agreement as if a party thereto.

Section 3.05. *No Exercise of Appraisal Rights.* Such Securityholder agrees not to exercise any appraisal rights or dissenter's rights in respect of its Subject Shares which may arise with respect to the Merger.

Section 3.06. *Legends.* If so requested by Parent, such Securityholder agrees that its Subject Shares shall bear a legend stating that they are subject to this Agreement; *provided* that the Company shall remove such legend upon the Termination Date.

Section 3.07. *Documentation and Information.* Such Securityholder (i) consents to and authorizes the publication and disclosure by Parent of its identity and holding of Subject Shares, the nature of its commitments and obligations under this Agreement (including, for the avoidance of doubt, the disclosure of this Agreement) and any other information, in each case, that Parent reasonably determines is required to be disclosed by Applicable Law in any press release, the Offer Documents, or any other disclosure document in connection with the Offer, the Merger and any transactions contemplated by the Merger Agreement and (ii) agrees promptly to give to Parent any information it may reasonably require for the preparation of any such disclosure documents. Such Securityholder agrees to promptly notify Parent of any required corrections with respect to any written information supplied by it specifically for use in any such disclosure document, if and to the extent that any shall have become false or misleading in any material respect.

ARTICLE 4
Series B Warrants

Section 4.01. *Redemption or Sale.* (a) On the second Business Day following Merger Subsidiary's acceptance of the Tender Shares in the Offer, at the election of Parent, (i) the Company shall redeem such Series B Warrants substantially in accordance with their terms or (ii) each holder of the Series B Warrants shall sell all of such holder's Series B Warrants to Parent (or a subsidiary of Parent). For each of clause (i) and (ii) above, the redemption price or purchase price, as the case may be, to be paid to each holder for its Series B Warrants shall be equal to what such holder of Series B Warrants would have received had such holder exercised such Series B Warrants by means of a "cashless exercise" under the terms of the Series B Warrants immediately prior to Merger Subsidiary's acceptance of the Tender Shares in the Offer.

(b) Parent shall give notice of its election to the Company and the holders of the Series B Warrants on the Business Day following Merger Subsidiary's acceptance of the Tender Shares in the Offer. Payment shall be made to the holders of the Series B Warrants no later than the third Business Day following Merger Subsidiary's acceptance of the Tender Shares in the Offer.

(c) In the event that the Offer is not consummated, the Series B Warrants shall remain outstanding until redeemed, exercised or otherwise terminated pursuant to their terms.

Section 4.02. *Covenant of the Holders.* Each holder of the Series B Warrants hereby agrees that it will not exercise, convert or transfer such warrants prior to the termination of this Agreement without the written consent of Parent, except as provided by this Article 4.

Section 4.03. *Covenants of the Company.* (a) The Company hereby waives any right to receive notice from the holders of the Series B Warrants required to be made pursuant to the terms of Series B Warrants in connection with a redemption in the event of a "Change of Control".

(b) The Company further agrees to use its reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate the transactions contemplated in this Article 4.

ARTICLE 5
Miscellaneous

Section 5.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Parent or Merger Subsidiary, to:

KLA-Tencor Corporation
160 Rio Robles
San Jose, California 95134
Attention: Chief Financial Officer
Facsimile No.: (408) 875-3030

with a copy to:

Davis Polk & Wardwell
1600 El Camino Real
Menlo Park, California 94025
Attention: William M. Kelly
Mischa Travers
Facsimile No.: (650) 752-2111

if to the Company, to:

Therma-Wave, Inc.
1250 Reliance Way
Fremont, California 94539
Attention: Chief Financial Officer
Facsimile No.: (510) 656-3852

with a copy to:

Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94304
Attention: Michael Phillips
Michael O'Bryan
Facsimile No.: (650) 494-0792

if to any Securityholder, to it at that address specified on Schedule A, with copies to the persons identified therein,

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to each other party hereto. All such notices, requests

and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 5.02. *Further Assurances.* (a) Each Securityholder shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further transfers, assignments, endorsements and other instruments as Parent or Merger Subsidiary may reasonably request to carry out the transactions expressly set forth in this Agreement.

(b) Parent and Merger Subsidiary shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further consents and other instruments as any other party may reasonably request to carry out the transactions contemplated by this Agreement.

Section 5.03. *Termination.* (a) This Agreement shall terminate automatically, without any notice or other action by any Person, upon the earlier of (i) the termination of the Merger Agreement in accordance with its terms and (ii) the Effective Time.

(b) Any holder of the Series B Convertible Preferred Stock shall have the right to terminate this Agreement immediately following (A) any change in the nature of the consideration payable in the Offer or the Merger, (B) any decrease in consideration payable in the Offer or the Merger, (C) any increase in the consideration payable to holders of Subject Shares that is not made equally available to holders of Series B Convertible Preferred Stock (on an as-converted basis), (D) any waiver of the Minimum Condition by each of the Company and Parent or (E) the date that is 9 months after the date of this Agreement.

(c) Notwithstanding the foregoing, nothing set forth in this Section 5.03 or elsewhere in this Agreement shall relieve either party hereto from liability, or otherwise limit the liability of either party hereto, for any breach of this Agreement.

Section 5.04. *Survival of Representations and Warranties.* The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time.

Section 5.05. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 5.06. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 5.07. *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto, except that each of Parent and Merger Subsidiary may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to one or more of its Affiliates at any time; provided that such transfer or assignment shall not relieve Parent or Merger Subsidiary of any of its obligations hereunder.

Section 5.08. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State.

Section 5.09. *Jurisdiction.* The parties hereto agree that any Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the State of Delaware or any Delaware state court, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such Proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 5.01 shall be deemed effective service of process on such party.

Section 5.10. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 5.11. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by each other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 5.12. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to its subject matter.

Section 5.13. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.14. *Specific Performance.* The parties hereto agree that each of Parent and Merger Subsidiary would be irreparably damaged if for any reason any Securityholder fails to perform any of its obligations under this Agreement, and that each of Parent and Merger Subsidiary would not have an adequate remedy at law for money damages in such event. Accordingly, each of Parent and Merger Subsidiary shall be entitled to specific performance and injunctive and other equitable relief to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or any Delaware state court, in addition to any other remedy to which they are entitled at law or in equity.

Section 5.15. *Securityholder Capacity.* Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall (or shall require any Securityholder to attempt to) limit or restrict any Securityholder who is a director or officer of the Company from acting in such capacity (it being understood that this Agreement shall apply to each Securityholder solely in each Securityholder's capacity as a holder of the Subject Shares).

Section 5.16. *Securityholder Obligations Several and not Joint.* The obligations of each Securityholder hereunder shall be several and not joint and no Securityholder shall be liable for any breach of the terms of this Agreement by any other Securityholder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

KLA-TENCOR CORPORATION

By: /s/ Jeffrey L. Hall
Name: Jeffrey L. Hall
Title: Chief Financial Officer

FENWAY ACQUISITION CORPORATION

By: /s/ Jeffrey L. Hall
Name: Jeffrey L. Hall
Title: President

THERMA-WAVE, INC.

By: /s/ Boris Lipkin
Name: Boris Lipkin
Title: President and CEO

[Signature Page to Tender and Support Agreement]

SECURITYHOLDERS

NORTH RUN MASTER FUND, LP

By: North Run GP, LP, its General Partner
By: North Run Advisors, LLC, its General Partner

By: /s/ Thomas B. Ellis
Thomas B. Ellis, Member

By: /s/ Todd B. Hammer
Todd B. Hammer, Member

[Signature Page to Tender and Support Agreement]

DEEPHAVEN LONG/SHORT EQUITY TRADING LTD.

By: Deephaven Capital Management LLC
Its: Investment Manager

By: /s/ Scott Nelson
Name: Scott Nelson
Title: Chief Operating Officer

DEEPHAVEN RELATIVE VALUE EQUITY TRADING LTD.

By: Deephaven Capital Management LLC
Its: Investment Manager

By: /s/ Scott Nelson
Name: Scott Nelson
Title: Chief Operating Officer

[Signature Page to Tender and Support Agreement]

LAWRENCE TOMLINSON

/s/ LAWRENCE TOMLINSON

G. LEONARD BAKER, JR.

/s/ G. LEONARD BAKER, JR.

JOHN J. D'ERRICO

/s/ JOHN J. D'ERRICO

GREGORY GRAVES

/s/ GREGORY GRAVES

NAM PYO SUH

/s/ NAM PYO SUH

[Signature Page to Tender and Support Agreement]

JOHN WILLINGE

/s/ JOHN WILLINGE

PETER HANLEY

/s/ PETER HANLEY

DAVID E. ASPNES

/s/ DAVID E. ASPNES

PAPKEN DER TOROSSIAN

/s/ PAPKEN DER TOROSSIAN

BORIS LIPKIN

/s/ BORIS LIPKIN

[Signature Page to Tender and Support Agreement]

JOSEPH PASSARELLO

/s/ JOSEPH PASSARELLO

BRIAN RENNER

/s/ BRIAN RENNER

JON L. OPSAL

/s/ JON L. OPSAL

JOHN MATTHEWS

/s/ JOHN MATTHEWS

RAUL TAN

/s/ RAUL TAN

NOEL SIMMONS

/s/ NOEL SIMMONS

LENA NICOLAIDES

/s/ LENA NICOLAIDES

[Signature Page to Tender and Support Agreement]

Exhibit (d)(3)

AMENDED AND RESTATED MUTUAL NONDISCLOSURE AGREEMENT

This Amended and Restated Mutual Nondisclosure Agreement ("Agreement") is made as of May 15, 2006 ("Effective Date") by and between KLA-Tencor Corporation, a Delaware corporation with its principal office at 160 Rio Robles, San Jose, California 95134 (together with its affiliates, "KLA"), and Therma-Wave Corporation, a Delaware corporation with its principal office at 1250 Reliance Way, Fremont, California 94539 (together with its affiliates, "Therma-Wave," and collectively with KLA, the "Parties").

WHEREAS, the Parties entered into a Mutual Nondisclosure Agreement, dated as of April 27, 2006 (the "Existing Agreement"), in connection with certain business discussions and now wish to amend and restate the Existing Agreement in its entirety as provided herein.

WHEREAS, in connection with a possible strategic business combination (the "Possible Transaction"), between KLA and Therma-Wave, and in order to allow KLA and Therma-Wave to evaluate the Possible Transaction, each of KLA and Therma-Wave have and will deliver to the other Party hereto, certain information about the Possible Transaction as well as information about such Party's businesses, operations, finances, properties, assets, employees, and prospects (such Party when disclosing such information being referred to herein as the "Disclosing Party" and when receiving such information being referred to herein as the "Receiving Party").

WHEREAS, in connection with their discussions regarding a Possible Transaction, the Parties desire to protect certain information from disclosure or use in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants in this Agreement, the Parties agree as follows:

1. For purposes of this Agreement, the following terms shall have the following respective meanings:

   "13D Group" shall mean, with respect to the Voting Securities (as defined below) of each of the Parties hereto, any group of persons formed for the purpose of acquiring, holding, voting or disposing of such Voting Securities which would be required under Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act") to file a statement on Schedule 13D with the Securities and Exchange Commission ("SEC") as a "person" within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Securities representing more than five percent (5%) of the total combined voting power of all such Voting Securities then outstanding.

   "Confidential Information" shall mean any and all information, including Technical Information (as defined below), and material disclosed by Disclosing Party or any of its Representatives (as defined below) to Receiving Party or any of its Representatives in connection with the Proposed Transaction or in the course of the Parties' evaluation of the Proposed Transaction, together with all communications, data, reports, analyses, compilations, studies, interpretations, records, notes, lists, financial statements or other

materials or information prepared by Receiving Party or any of its Representatives that contain or otherwise reflect or are based upon, in whole or in part, any Confidential Information of Disclosing Party or that reflect the review of, interest in, or evaluation of all or any portion of the Proposed Transaction or Disclosing Party's business, whether tangible or intangible, furnished or prepared in writing or in oral, graphic, electronic or any other form or manner, and whether furnished or prepared before, on or after the date hereof, and that is marked or identified in writing as confidential or proprietary or is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Confidential Information shall not include: i) information that was in the public domain at the time it was disclosed or later comes within the public domain, except through the acts or omissions of the Receiving Party; ii) information that was known to the Receiving Party on a non-confidential basis prior to the time of its disclosure by Disclosing Party; iii) information that is approved for release by written authorization of the Disclosing Party; iv) information that becomes known to the Receiving Party from a source other than the Disclosing Party without breach of an obligation of confidentiality which is known to the Receiving Party; or v) information that is independently developed by employees or representatives of the Receiving Party without access to the Confidential Information.

"Person" shall be broadly interpreted to include, without limitation, any corporation, limited liability company, general or limited partnership, business trust, unincorporated associated or other entity or individual.

"Representative" shall mean, as to any Person, its directors, officers, employees, agents, advisors (including, without limitation, financial advisors, attorneys and accountants), and any equity or debt financing sources or other partners.

"Significant Event" shall mean, with respect to each of the Parties hereto, (A) the announcement or commencement by any Person or 13D Group of a tender or exchange offer to acquire "Voting Securities" (as defined below) of such Party which, if successful, would result in such Person or 13D Group owning, when combined with any other Voting Securities of such Party owned by such Person or 13D Group, more than fifty percent (50%) of the then outstanding Voting Securities of such Party, (B) the entry into by such Party, or determination by such Party to seek to enter into, any merger, sale or other business combination transaction pursuant to which the outstanding shares of common stock of such Party would be converted into cash or securities of another person or 13D Group or more than fifty percent (50%) of the then outstanding shares of common stock of such Party would be owned by Persons other than the then current holders of shares of common stock of such Party, or which would result in all or a substantial portion of such party's assets being sold to any person or 13D Group, (C) the entry of any judgment or order by a court of competent jurisdiction, or the presentation by such Party or any third party of any petition in a court of competent jurisdiction, or the adoption or passage of any resolution by the board of directors or other similar governing body of such Party, in any such case contemplating the liquidation, dissolution or winding-up of

the affairs of such Party, or (D) the appointment of a receiver, trustee or other similar administrator for the business and assets of such Party.

"Technical Information" shall mean any (i) trade secret, know-how, idea, invention, process, technique, algorithm, program (whether in source code or object code form), hardware, device, design, schematic, drawing, formula, data, plan, strategy, client and customer lists or forecasts of Disclosing Party; and (ii) technical, engineering, manufacturing, or product information or materials of Disclosing Party.

"Voting Securities" shall mean, with respect to each of the Parties hereto, at any time shares of any class of capital stock of such party that are then entitled to vote generally in the election of directors; *provided*, *however*, that for purposes of this definition any securities which at such time are convertible or exchangeable into or exercisable for shares of common stock of such party shall be deemed to have been so converted, exchanged or exercised;

2. All Confidential Information furnished pursuant to this Agreement is done so solely for the purpose of evaluation of each Party's potential interest in the Possible Transaction.

   No other right, license or authorization, express or implied, to use is granted and each Party agrees to be so limited with respect to all Confidential Information hereby received. In addition, neither Party makes any warranty as to the accuracy of any Confidential Information. Each of the Parties hereto understands and agrees that nothing in this Agreement shall be construed to require either Party hereto to disclose or otherwise provide any particular Confidential Information to the other Party hereto, and that each Party hereto shall be entitled, in its sole discretion, to withhold from the other Party hereto any Confidential Information. All right, title and interest in the Confidential Information shall remain that of the Disclosing Party. Neither Party shall acquire any rights in the Confidential Information, except the limited right to use the Confidential Information as described above.

3. Except as otherwise provided in this Agreement, the Receiving Party agrees that for a period of five (5) years from the date of disclosure it shall not disclose Confidential Information received from the Disclosing Party to any third party nor use such Confidential Information for any purpose other than to evaluate its interest in the Possible Transaction. The Receiving Party shall use the same degree of care in maintaining the confidentiality of the Confidential Information as it uses with respect to its own information that is regarded as confidential and/or proprietary by such Party, but in any case shall at least use reasonable care. Each Party agrees that it will restrict the access of all Confidential Information to only those of its Representatives who have need to be informed of the Confidential Information for the purposes for which the Confidential Information is provided, which Persons will be bound to the Receiving Party by an agreement of confidentiality that contains substantially the same obligations contained in this Agreement. Notwithstanding the foregoing, the Receiving Party hereby agrees that the Persons listed on Exhibit A hereto (who shall be identified by Receiving Party from time to time after the date hereof and added to Exhibit A hereto with the consent of Disclosing Party, which consent shall not be unreasonably withheld) are the only Persons

who will be allowed to review the Technical Information disclosed by the Disclosing Party.

4. If either Party hereto shall determine that it does not wish to proceed with the Possible Transaction, such party shall promptly advise the other Party of that decision. In that case, or in the event that the Disclosing Party, in its sole discretion, so requests or if the Possible Transaction is not consummated by the Receiving Party, the Receiving Party shall, upon the Disclosing Party's written request, promptly deliver to the Disclosing Party all Confidential Information provided by the Disclosing Party or any of its Representatives, and, at the Receiving Party's election, return or destroy (provided that any such destruction shall be certified by a duly authorized Representative of the Receiving Party) all copies, reproductions, summaries, analyses or extracts thereof or based thereon (whether in hard-copy form or on intangible media, such as electronic mail or computer files) in the Receiving Party's possession or in the possession of any Representative of the Receiving Party; *provided*, *however*, that if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered.

6. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law (including, without limitation, any rule, regulation or policy statement of any national securities exchange, market or automated quotation system on which any of the Receiving Party's securities are listed or quoted) or by legal process to disclose any Confidential Information or any other information concerning the Disclosing Party or the Possible Transaction, the Receiving Party shall provide the Disclosing Party with prompt written notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy, (ii) to consult with the Receiving Party with respect to taking steps to resist or narrow the scope of such request or legal process or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, (A) the Receiving Party or its Representative shall use its commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and (B) to use commercially reasonable efforts to provide that all Confidential Information that is so disclosed will be accorded confidential treatment. In the event that the Receiving Party or its Representatives shall have complied fully with the provisions of this paragraph, the Receiving Party or its Representatives may disclose only that Confidential Information that it is legally required to disclose without any liability hereunder.

7. To the extent that any Confidential Information may include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or governmental investigations, the Parties hereto understand and agree that they have a commonality of interest with respect to such matters and it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client

privilege, work product doctrine or other applicable privilege. All Confidential Information provided by a Party hereto or its Representatives that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under these privileges, this Agreement, and under the joint defense doctrine, and the Parties agree to take all measures reasonably necessary to preserve, to the fullest extent possible, the applicability of all such privileges or doctrines. Nothing in this Agreement obligates any Party hereto to reveal material subject to the attorney-client privilege, work product doctrine or any other applicable privilege.

8. Each Party is aware, and shall advise its Representatives who are informed of the matters that are the subject of this Agreement, of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any Person who has received material, non-public information from the issuer of such securities and on the communication of such information to any other Person when it is reasonably foreseeable that such other Person is likely to purchase or sell such securities in reliance upon such information.

9. For a period commencing with the Effective Date and ending on the earlier to occur of (i) the 11:59 p.m. (California time) on the first (1st) anniversary of the Effective Date, or (ii) the occurrence of a Significant Event, neither Party hereto shall, and neither Party hereto shall permit any of its Representatives to, without the prior written consent of the board of directors of the other Party hereto: (A) acquire, offer to acquire, or agree to acquire, directly or indirectly, by purchase or otherwise, any voting securities or direct or indirect rights to acquire any voting securities of the other Party hereto or any subsidiary thereof, or of any successor to or person in control of the other Party hereto, or any assets of the other Party hereto or any subsidiary or division thereof or of any such successor or controlling person; (B) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are defined in the rules and regulations of the Securities and Exchange Commission ("SEC")), or seek to advise or influence any person or entity with respect to the voting of any voting securities of the other party hereto; (C) make any public announcement with respect to, or submit a proposal for, or offer of (with or without conditions) any extraordinary transaction involving the other party or any of its securities or assets; (D) form, join or in any way participate in a "group" as defined in Section 13(d)(3) of the Exchange Act in connection with any of the foregoing; (E) otherwise act or seek to control or influence the management, board of directors or policies of the other party hereto; (F) take any action that could reasonably be expected to require the other party to make a public announcement regarding the possibility of any of the events described in clauses (A) through (E) above; or (F) request the other party hereto, its board of directors, or any of its Representatives, directly or indirectly, to amend or waive any provision of this paragraph (including, without limitation, clauses (A) through (F) above).

10. For a period commencing with the Effective Date and ending at 11:59 p.m. (California time) on the first (1st) anniversary of the Effective Date, neither Party hereto shall, and neither Party hereto shall permit any of its Representatives to, directly or indirectly, solicit for employment any employee of the other Party hereto that has been introduced

by such Party in connection with the Possible Transaction; provided, however, that non-directed newspaper or internet help wanted advertisements and search firm engagements shall not be considered solicitations hereunder.

11. Except as otherwise provided herein, the obligations of this Agreement, including the restrictions on disclosure and use, shall terminate on the second (2nd) anniversary of the Effective Date.

12. The parties agree that this Agreement and all disputes arising hereunder shall be governed by the laws of the State of California excluding choice of law rules. In addition, it is acknowledged and agreed that a breach of the obligations of this Agreement is likely to cause irreparable harm to the disclosing party and that money damages alone would be inadequate as a remedy for a breach of such obligations. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final order from which there is no appeal that this Agreement has been breached by a Party or by its Representatives, the breaching party or the Party whose Representatives have breached this Agreement, as the case may be, will reimburse the other Party for its costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with the enforcement of this Agreement and such litigation.

13. This Agreement constitutes the entire understanding between the parties as to the Confidential Information and supersedes the Existing Agreement in its entirety. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized representatives.

This Agreement has been signed by the duly authorized representatives of the Parties in identical counterparts, all of which comprise but one agreement on the subject matter hereof.

KLA-Tencor Corporation	Therma-Wave Corporation
By: /s/ Gary Bultman	By: /s/ Boris Lipkin
Name: Gary Bultman	Name: Boris Lipkin
Title: Sr. V.P.	Title: President & CEO
Date: 5/15/06	Date: 5/15/06

EXHIBIT A

Persons with Access to Technical Information

Pursuant to Section 3 of the Agreement, the following are the only Persons who will be allowed to review the Technical Information disclosed by the Disclosing Party:

NAME	POSITION WITH RECEIVING PARTY
Chris Bevis	CTO office
Stan Stokowski	CTO office
Brian Trafas	Group marketing, wafer inspection group
Larry Wagner	Business development
Chuck Kelso	Finance
Tim Cross	Wafer inspection group supply chain
Kevin Whiteside	Manufacturing group
Joe Cao	Global services
Shubham Maheshwari	Corporate controller
Cannon Holbrook	Finance
Nancy Crawford	HR
Kim Jackson	Legal
Christian Bastoul	eBeam business, Integration team leader