

# SECURITIES AND EXCHANGE COMMISSION

## FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2004-06-22**  
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([HTML Version](#) on [secdatabase.com](#))

### FILED BY

#### **BREKKA RICHARD**

CIK: **1216110**  
Type: **SC 13D/A**

Business Address  
*DOLPHIN EQUITY PARTNERS  
LP  
750 LEXINGTON AVE.  
NEW YORK NY 10022*

### SUBJECT COMPANY

#### **VITALSTREAM HOLDINGS INC**

CIK: **789851** | IRS No.: **870429944** | State of Incorpor.: **NV** | Fiscal Year End: **1231**  
Type: **SC 13D/A** | Act: **34** | File No.: **005-39870** | Film No.: **04874370**  
SIC: **7389** Business services, nec

Mailing Address  
*ONE JENNER  
SUITE 100  
IRVINE CA 92618*

Business Address  
*ONE JENNER  
SUITE 100  
IRVINE CA 92618  
(949) 743-2000*

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

OMB APPROVAL

OMB Number: 3235-0145

SCHEDULE 13D

Expires: December  
31, 2005

UNDER THE SECURITIES EXCHANGE  
ACT OF 1934  
(AMENDMENT NO. 2)

Estimated average  
burden hours per  
response ....11

VITALSTREAM HOLDINGS, INC.

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(Name of Issuer)

COMMON STOCK, \$0.001 PAR VALUE PER SHARE

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(Title of Class of Securities)

817253107

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(CUSIP Number)

DOLPHIN EQUITY PARTNERS, L.P.  
750 LEXINGTON AVENUE, 16TH FLOOR  
NEW YORK, NEW YORK 10022  
ATTENTION: MR. RICHARD J. BREKKA  
TEL: (212) 446-1600

WITH A COPY TO:

KIRKLAND & ELLIS LLP  
CITIGROUP CENTER  
153 EAST 53RD STREET  
NEW YORK, NEW YORK 10022  
ATTENTION: MR. JOHN KUEHN, ESQ.  
TEL: (212) 446-4821

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(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

JUNE 15, 2004

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(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. [ ]

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 817253107

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[Repeat following page as necessary]

1 NAMES OF REPORTING PERSONS / I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  
(ENTITIES ONLY)

Dolphin Communications Fund II, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS\*

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2(D) OR 2(E)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES 12,324,123 shares of common stock (including 2,093,650  
BENEFICIALLY shares of common stock issuable upon exercise of  
warrants)

OWNED BY 8 SHARED VOTING POWER

EACH --

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON 12,324,123 shares of common stock (including 2,093,650  
WITH shares of common stock issuable upon exercise of  
warrants)

10 SHARED DISPOSITIVE POWER

--

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

12,324,123 shares of common stock

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN  
SHARES\* [ ]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

16.94%

14 TYPE OF REPORTING PERSON\*

PN

\* SEE INSTRUCTIONS.

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[Repeat following page as necessary]

1 NAMES OF REPORTING PERSONS / I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  
(ENTITIES ONLY)

Dolphin Communications Parallel Fund II (Netherlands), L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a) [X]

(b) [ ]

3 SEC USE ONLY

4 SOURCE OF FUNDS\*

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2 (D) OR 2 (E) [ ]

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER  
SHARES 1,380,596 shares of common stock (including 234,705  
BENEFICIALLY shares of common stock issuable upon exercise of  
warrants)

OWNED BY 8 SHARED VOTING POWER

EACH --

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON 1,380,596 shares of common stock (including 234,705  
WITH shares of common stock issuable upon exercise of  
warrants)

10 SHARED DISPOSITIVE POWER

--

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,380,596 shares of common stock

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\* [ ]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.90 %

14 TYPE OF REPORTING PERSON\*

PN

\* SEE INSTRUCTIONS.

CUSIP No. 817253107

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[Repeat following page as necessary]

1 NAMES OF REPORTING PERSONS / I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  
(ENTITIES ONLY)

Dolphin Communications II, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS\*

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(D) OR 2(E)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER  
SHARES 17,553,479 shares of common stock (including 2,328,355  
BENEFICIALLY shares of common stock issuable upon exercise of  
warrants)

OWNED BY 8 SHARED VOTING POWER  
EACH --

REPORTING 9 SOLE DISPOSITIVE POWER  
PERSON 17,553,479 shares of common stock (including 2,328,355  
WITH shares of common stock issuable upon exercise of  
warrants)

10 SHARED DISPOSITIVE POWER  
--

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

17,553,479 shares of common stock

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

24.12% (calculated assuming the exercise of all warrants held by each member of the group of reporting persons filing this Amendment Number 2 to Schedule 13D)

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14 TYPE OF REPORTING PERSON\*

PN

\* SEE INSTRUCTIONS.

CUSIP No. 817253107

13D

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[Repeat following page as necessary]

1 NAMES OF REPORTING PERSONS / I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  
(ENTITIES ONLY)

Dolphin Communications, L.L.C.

-----  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a)

(b)

-----  
3 SEC USE ONLY

-----  
4 SOURCE OF FUNDS\*

AF

-----  
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2 (D) OR 2 (E) [ ]

-----  
6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

-----  
NUMBER OF 7 SOLE VOTING POWER  
SHARES 17,553,479 shares of common stock (including 2,328,355  
BENEFICIALLY shares of common stock issuable upon exercise of  
warrants)  
-----  
OWNED BY 8 SHARED VOTING POWER  
EACH --  
-----  
REPORTING 9 SOLE DISPOSITIVE POWER  
PERSON 17,553,479 shares of common stock (including 2,328,355  
WITH shares of common stock issuable upon exercise of  
warrants)  
-----

--

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

17,553,479 shares of common stock

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\* [ ]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

24.12% (calculated assuming the exercise of all warrants held by each member of the group of reporting persons filing this Amendment Number 2 to Schedule 13D)

14 TYPE OF REPORTING PERSON\*

PN

\* SEE INSTRUCTIONS.

CUSIP No. 817253107

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[Repeat following page as necessary]

1 NAMES OF REPORTING PERSONS / I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Richard Brekka

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a) [X]

(b) [ ]

3 SEC USE ONLY

4 SOURCE OF FUNDS\*

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2 (D) OR 2 (E) [ ]

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States



NUMBER OF 7 SOLE VOTING POWER

SHARES 17,553,479 shares of common stock (including  
BENEFICIALLY 2,328,355 shares of common stock issuable upon  
exercise of warrants)

OWNED BY 8 SHARED VOTING POWER

EACH --

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON 17,553,479 shares of common stock (including  
WITH 2,328,355 shares of common stock issuable upon  
exercise of warrants)

10 SHARED DISPOSITIVE POWER

--

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

17,553,479 shares of common stock

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

[ ]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

24.12% (calculated assuming the exercise of all warrants held by  
each member of the group of reporting persons filing this Amendment  
Number 2 to Schedule 13D)

14 TYPE OF REPORTING PERSON\*

PN

\* SEE INSTRUCTIONS.

This Amendment Number 2 to Schedule 13D is filed by Dolphin Communications Fund II, L.P., a Delaware limited partnership ("Dolphin Fund II"), Dolphin Communications Parallel Fund II (Netherlands), L.P. ("Dolphin Parallel II"), Dolphin Communications II, L.P., a Delaware limited partnership ("Dolphin Communications II"), Dolphin Communications, L.L.C., a Delaware limited liability company ("Dolphin LLC") and Richard Brekka, an individual ("Brekka") and amends the Amendment Number 1 to Schedule 13D dated October 10, 2003 (the "Initial Schedule 13D"), filed by Brekka, Dolphin Fund II, Dolphin Parallel II, Dolphin Communications II, Dolphin LLC, Epoch Hosting, Inc., a Delaware corporation, Epoch Networks, Inc., a California corporation, Epoch Holdings, Inc., a Delaware corporation, Dolphin Communications Fund, L.P., a Delaware

limited partnership, Dolphin Communications Parallel Fund, L.P., a Delaware limited partnership, Dolphin Communications, L.P., a Delaware limited partnership, Dolphin Communications I, L.L.C., a Delaware limited liability company (together, the "Reporting Persons"). Capitalized terms used herein but not defined shall have the meaning ascribed thereto in the Initial Schedule 13D. This Amendment No. 2 to Schedule 13D hereby amends and supplements the Initial Schedule 13D. All items not described herein remain as previously reported in the Initial Schedule 13D.

#### ITEM 3. SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION

The source of funds for such purchase was the working capital, or funds available for investment, of Dolphin Fund II and Dolphin Parallel II.

#### ITEM 4. PURPOSE OF THE TRANSACTION.

(a) The Reporting Persons have acquired securities of the Issuer for investment purposes.

(b) On June 15, 2004, Dolphin Fund II, Dolphin Parallel II, certain other parties and VitalStream Holdings, Inc. (the "Issuer") entered into a Purchase Agreement (the "Purchase Agreement"). The Purchase Agreement is attached hereto as Exhibit A, and any description herein is qualified in its entirety by reference thereto. On June 15, 2004, Dolphin Fund II, Dolphin Parallel II and the Issuer also entered into a Conversion Agreement (the "Conversion Agreement"). The Conversion Agreement is attached hereto as Exhibit B, and any description herein is qualified in its entirety by reference thereto.

(c) The following transactions were consummated under the Purchase Agreement and the Conversion Agreement:

(i) Dolphin Fund II and Dolphin Parallel II purchased an aggregate of 3,423,988 shares of Common Stock of the Issuer and warrants to purchase 1,027,197 shares of Common Stock (the "Warrants"). The Warrants, a form of which is attached hereto as Exhibit C, are exercisable immediately, for a period of five years ending on June 15, 2009, at an exercise price of \$0.61332 per share of Common Stock, subject to adjustment. Under certain circumstances Dolphin Fund II and Dolphin Parallel II could be required to purchase additional shares of Common Stock of the Issuer under the Warrants. Any description herein of the Warrant is qualified in its entirety by reference to Exhibit C.

(ii) In connection with the transactions contemplated by the Purchase Agreement, Dolphin Fund II, Dolphin Parallel II, the Issuer and certain other parties thereto entered into a Registration Rights Agreement, dated June 15, 2004 (the "Registration Rights Agreement"), pursuant to which the Issuer has agreed to register shares of Common Stock held by Dolphin. The Registration Rights Agreement is attached hereto as Exhibit D, and any description herein is qualified in its entirety by reference thereto.

(iii) In connection with the transactions contemplated by the Purchase Agreement, Dolphin Fund II, Dolphin Parallel II, the Issuer and certain other parties thereto entered into an Investor Rights Agreement and an Amendment to Investor Rights Agreement pursuant to which the parties thereto have agreed to vote the shares held by them to nominate certain directors to the board of directors of the Issuer. The Investor Rights Agreement is attached hereto as Exhibit E and any description herein is qualified in its entirety by reference thereto. The Amendment to Investor Rights Agreement is attached hereto as an Exhibit to the Conversion Agreement, which is attached hereto as Exhibit B, and any description herein is qualified in its entirety by reference thereto.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

See the cover pages hereto.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

See Item 4 above.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit A	--	Form of Purchase Agreement
Exhibit B	--	Form of Conversion Agreement
Exhibit C	--	Form of Warrant
Exhibit D	--	Form of Registration Rights Agreement
Exhibit E	--	Form of Investor Rights Agreement

SIGNATURES

After reasonable inquiry and to the best of each of the undersigned's knowledge and belief, each of the undersigned certify that the information set forth in this statement is true, complete and correct.

Date: June 22, 2004

DOLPHIN COMMUNICATIONS FUND II, L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Richard J. Brekka

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Name: Richard J. Brekka

Title: President

DOLPHIN COMMUNICATIONS PARALLEL FUND  
II (NETHERLANDS), L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Richard J. Brekka

---

Name: Richard J. Brekka

Title: President

DOLPHIN COMMUNICATIONS II, L.P.

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Richard J. Brekka

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Name: Richard J. Brekka

Title: President

DOLPHIN COMMUNICATIONS, L.L.C.

By: /s/ Richard J. Brekka

---

Name: Richard J. Brekka

Title: Managing Member

RICHARD BREKKA

/s/ Richard J. Brekka

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## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made as of the 14th day of June, 2004 by and among VitalStream Holdings, Inc., a Nevada corporation (the "Company"), and the Investors set forth on the signature pages hereto (each an "Investor" and collectively the "Investors").

## RECITALS

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Section 4(2) and/or Regulation D ("Regulation D"), as promulgated by the U.S. Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended; and

B. Each of the Investors wishes to purchase from the Company, and the Company wishes to sell and issue to each of the Investors, upon the terms and conditions stated in this Agreement, such number of (i) shares of the Company's Common Stock, par value \$0.001 per share (the "Common Stock") and (ii) warrants to purchase shares of Common Stock in the form attached hereto as Exhibit A (the "Warrants") as set forth below each Investor's name on such Investor's signature page hereto; and

C. Contemporaneous with the sale of the Common Stock and Warrants, the parties hereto will execute and deliver a Registration Rights Agreement, in the form attached hereto as Exhibit B (the "Registration Rights Agreement"), pursuant to which the Company will agree to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and applicable state securities laws; and

D. Contemporaneous with the sale of the Common Stock and Warrants, the parties hereto and certain stockholders of the Company will execute and deliver an Investor Rights Agreement, in the form attached hereto as Exhibit C (the "Investor Rights Agreement"), pursuant to which the Company and such stockholders will agree to provide for the future voting of their shares of the Company's capital stock and certain other terms.

E. Contemporaneous with the sale of the Common Stock and Warrants, the parties hereto and certain stockholders of the Company will execute and deliver a Second Amended and Restated Registration Rights Agreement, in the form attached hereto as Exhibit D (the "Second Amended Registration Rights Agreement"), pursuant to which the Investor will be granted certain participation rights in future registration of the Company.

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

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"Affiliate" means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such Person.

"Applied Conversion Proceeds" means, with respect to any Investor party to the Conversion Agreement, the amount that such Investor would be entitled to receive at the closing under the Conversion Agreement that such Investor has authorized the Company in the Conversion Agreement to apply toward the Purchase Price of such Investor.

"Business Day" means a day, other than a Saturday or Sunday, on which banks in Los Angeles are open for the general transaction of business.

"Common Stock" has the meaning set forth in the Recitals.

"Company's Knowledge" means the actual knowledge of the officers (as defined in Rule 405 under the 1933 Act) of the Company, after due inquiry.

"Confidential Information" means trade secrets, confidential information and know-how (including but not limited to ideas, formulae, compositions, processes, procedures and techniques, research and development information, computer program code, performance specifications, support documentation, drawings, specifications, designs, business and marketing plans, and customer and supplier lists and related information).

"Control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Conversion Agreement" means the Conversion Agreement dated as of June 14, 2004, by and among the Company, Dolphin Communications Parallel Fund II (Netherlands), L.P. and Dolphin Communications Fund II, L. P. and the holders of Series A Preferred party thereto.

"Intellectual Property" means all of the following: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice); (ii) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights and copyrightable works; (iv) registrations, applications and

renewals for any of the foregoing; and (v) proprietary computer software (including but not limited to data, data bases and documentation).

"Major Investor" means any Investor that purchases Shares and Warrants with a Purchase Price of \$6 million or more.

"Material Adverse Effect" means a material adverse effect on (i) the assets, liabilities, results of operations, financial condition or business of the Company and its Subsidiaries taken as a whole (provided, however, that the parties agree that any event that would reasonably be expected to cause less than a \$100,000 reduction in the shareholders equity of the Company or

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the net income (loss) of the Company shall not be deemed to be "material") or (ii) the ability of the Company to perform its obligations under the Transaction Documents.

"Nasdaq" means The Nasdaq Stock Market, Inc.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Purchase Price" means, with respect to each Investor, the Purchase Price designated on the counterpart signature page signed by such Investor. The Purchase Price shall be calculated based upon a purchase price of \$.61332 per unit of one Share and .3 Warrant.

"Registration Statement" shall mean any registration statement of the Company filed under the 1933 Act that covers the resale of any of the Securities pursuant to the provisions of the Registration Rights Agreement by and among the Company and the Investors as of the date hereof, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"SEC Filings" has the meaning set forth in Section 4.6.

"Securities" means the Shares, the Warrants and the Warrant Shares.

"Shares" means the shares of Common Stock being purchased by the Investors hereunder.

"Subsidiary" means a Person of which the Company holds more than 40% of the outstanding equity interests.

"Transaction Documents" means this Agreement, the Warrants, the Registration Rights Agreement and the Investor Rights Agreement.

"Warrant Shares" means the shares of Common Stock issuable upon the exercise of the Warrants.

"1933 Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. Purchase and Sale of the Shares and Warrants. Subject to the terms and conditions of this Agreement, on the Closing Date, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, severally and not jointly, the Shares and Warrants in the respective amounts set forth opposite the Investors' names on the

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signature pages attached hereto in exchange for the Purchase Price as specified in Section 3 below.

3. Closing. The Company shall deliver to ThinkEquity Partners (the "Placement Agent"), in trust, a certificate or certificates, registered in such name or names as the Investors may designate, representing the Shares and Warrants, with instructions that such certificates are to be held for release to each Investor only upon payment in full of that Investor's Purchase Price as set forth in the signature pages of this Agreement. Upon such receipt by the Placement Agent of the certificates, each Investor shall promptly, but no more than one Business Day thereafter, cause a wire transfer in same-day funds to be sent to the account of the Company set forth immediately following this paragraph in an amount representing such Investor's Purchase Price as set forth on the signature pages to this Agreement; provided, however, any Investor party to the Conversion Agreement shall be required to wire transfer only the amount by which the Purchase Price exceeds the Applied Conversion Proceeds. On the date (the "Closing Date") the Company receives from any Investor, such Investor's Purchase Price constituting in the aggregate the minimum amount required by Section 6.2(d) hereof, the certificates evidencing the Shares and Warrants purchased by such Investors shall be released to the Investors (the "Closing"). To the extent the Closing does not occur within three Business Days of the date the Company receives from any Investor such Investor's Purchase Price, the Company shall, by the next Business Day, return to such Investor such Investor's Purchase Price. The Closing of the purchase and sale of the Shares and Warrants shall take place at the offices of the Company, or at such other location and on such other date as the Company and the Investors shall mutually agree. To the extent permitted by Section 6, the transactions contemplated by this Agreement may occur in more than one Closing, in which case the terms "Closing" and "Closing Date" shall, for each Investor, refer to or be based upon the Closing(s) in which such Investor participates.



The Purchase Price shall be wire transferred to the following account:

Alliance Bank  
1901 Main Street, Suite 100  
Irvine, CA 92614  
Routing # 122237997  
Beneficiary Account Name: VitalStream, Inc.  
Beneficiary Account Number: 01052799

4. Representations and Warranties of the Company. The Company hereby represents and warrants to the Investors that, except as set forth in the schedules delivered herewith (collectively, the "Disclosure Schedules"):

4.1 Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own its properties. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property

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makes such qualification or leasing necessary unless the failure to so qualify has not and could not reasonably be expected to have a Material Adverse Effect. The Subsidiaries are reflected on Schedule 4.1 hereto.

4.2 Authorization. The Company has full power and authority and has taken all requisite action on the part of the Company, and its officers, directors and stockholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

4.3 Capitalization. Schedule 4.3 sets forth as of the date hereof (a) the authorized capital stock of the Company; (b) the number of shares of capital stock issued and outstanding; (c) the number of shares of capital stock issuable pursuant to options or other rights outstanding under the Company's stock plans; and (d) the number of shares of capital stock issuable and reserved for issuance pursuant to securities (other than the Shares, the Warrants and options or other rights outstanding under the Company's stock plans) exercisable for, or convertible into or exchangeable for any shares of capital stock of the Company. All of the issued and outstanding shares of the

Company's capital stock have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable state and federal securities law and any rights of third parties. Except as described on Schedule 4.3, all of the issued and outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights, were issued in full compliance with applicable state and federal securities law and any rights of third parties and are owned by the Company, beneficially and of record, subject to no lien, encumbrance or other adverse claim. Except as described on Schedule 4.3, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company. Except as described on Schedule 4.3, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company or any of its Subsidiaries is or may be obligated to issue any equity securities of any kind and except as contemplated by this Agreement, neither the Company nor any of its Subsidiaries is currently in negotiations for the issuance of any equity securities of any kind. Except as described on Schedule 4.3 and except for the Registration Rights Agreement and the Investor Rights Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as described on Schedule 4.3, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

Except as described on Schedule 4.3, the issuance and sale of the Securities hereunder will not obligate the Company to issue shares of Common Stock or other securities to any other

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Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

Except as described on Schedule 4.3, the Company does not have outstanding stockholder purchase rights or a "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.4 Valid Issuance. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions (other than those created by the Investors), except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. The Warrants have been duly and validly authorized and will be validly issued when issued in accordance with the terms of this Agreement. Upon the due exercise of the Warrants and issuance of the

Warrants Shares in accordance with the terms of the Warrants, the Warrant Shares will be validly issued, fully paid and nonassessable, free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws and except for those created by the Investors. The Company has reserved a sufficient number of shares of Common Stock for issuance upon the exercise of the Warrants, free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws and except for those created by the Investors.

4.5 Consents. The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency or official having jurisdiction over the Company or any of its Affiliates that has not been obtained, including without limitation, the OTC Bulletin Board (the "Bulletin Board") and the Company's stockholders, other than filings that have been made pursuant to applicable state securities laws and post-sale filings pursuant to applicable state and federal securities laws which the Company undertakes to file within the applicable time periods. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities, (ii) the issuance of the Warrant Shares upon due exercise of the Warrants, and (iii) the other transactions contemplated by the Transaction Documents from the provisions of any shareholder rights plan or other "poison pill" arrangement, any anti-takeover, business combination or control share law or statute binding on the Company or to which the Company or any of its assets and properties may be subject and any provision of the Company's Certificate of Incorporation or Bylaws that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby, including without limitation, the issuance of the Securities and the ownership, disposition or voting of the Securities by the Investors or the exercise of any right granted to the Investors pursuant to this Agreement or the other Transaction Documents.

4.6 Delivery of SEC Filings; Business. The Company has made available to the Investors through the EDGAR system true and complete copies of the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2003 (the "10-K"), and all

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other reports filed by the Company pursuant to the 1934 Act since the filing of the 10-K and prior to the date hereof (collectively, the "SEC Filings"). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such period. The Company and its Subsidiaries are engaged in all material respects only in the business described in the SEC Filings and, to the extent required by rules governing the content of the SEC Filings, the SEC Filings contain a complete and accurate description in all material respects of the business of the Company and its Subsidiaries, taken as a whole.

4.7 Use of Proceeds. The net proceeds of the sale of the Shares and the Warrants hereunder shall be used by the Company for working capital and general corporate purposes, including acquisitions of complementary businesses, products or technologies.

4.8 No Material Adverse Change. Since March 31, 2004, except as identified and described in the SEC Filings, as expressly contemplated by this Agreement or as described on Schedule 4.8, there has not been:

(a) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, except for changes in the ordinary course of business which have not and could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(b) any declaration or payment of any dividend, or any authorization or payment of any distribution, on any of the capital stock of the Company, or any redemption or repurchase of any securities of the Company;

(c) any material damage, destruction or loss, whether or not covered by insurance to any assets or properties of the Company or its Subsidiaries;

(d) any waiver, not in the ordinary course of business, by the Company or any Subsidiary of a material right or of a material debt owed to it;

(e) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or a Subsidiary, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results, business or prospects of the Company and its Subsidiaries taken as a whole (as such business is presently conducted);

(f) any change or amendment to the Company's Certificate of Incorporation or Bylaws, or material change to any material contract or arrangement by which the Company or any Subsidiary is bound or to which any of their respective assets or properties is subject;

(g) any material labor difficulties or labor union organizing activities with respect to employees of the Company or any Subsidiary;

(h) any material transaction entered into by the Company or a Subsidiary other than in the ordinary course of business;

(i) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company or any Subsidiary;

(j) any material changes in compensation arrangements with any key employee, senior management or directors;

(k) the loss or threatened loss in writing of any customer which has had or could reasonably be expected to have a Material Adverse Effect;

(l) any sale, assignment or exclusive license or transfer of the Company's Intellectual Property;

(m) any material change in contingent obligations of the Company by way of guaranty, endorsement, indemnity, warranty or otherwise; or

(n) to the Company's Knowledge, any other event or condition of any character that has had or could reasonably be expected to have a Material Adverse Effect.

#### 4.9 SEC Filings; S-2 Eligibility; Sarbanes-Oxley Act.

(a) At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the 1934 Act and did 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.

(b) Each registration statement and any amendment thereto filed by the Company since April 23, 2002 pursuant to the 1933 Act, as of the date such statement or amendment became effective, complied as to form in all material respects with the 1933 Act and did 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 not misleading; and each prospectus filed pursuant to Rule 424(b) under the 1933 Act, as of its issue date and as of the closing of any sale of securities pursuant thereto did 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.

(c) The Company is eligible to use Form S-2 to register the Registrable Securities (as such term is defined in the Registration Rights Agreement) for sale by the Investors as contemplated by the Registration Rights Agreement.

(d) The Company is in compliance in all material respects with all provisions of the Sarbanes-Oxley Act of 2002 that are

applicable to it as of the date hereof.

4.10 No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company, the issuance and sale of the Securities and the issuance of Warrant Shares will not conflict with or result in a breach or

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violation of any of the terms and provisions of, or constitute a default under (i) the Company's Certificate of Incorporation or the Company's Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Investors through the EDGAR system), or (ii) (a) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any Subsidiary or any of their respective assets or properties, or (b) except as set forth on Schedule 4.10, any agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or a Subsidiary is bound or to which any of their respective assets or properties are subject.

4.11 Tax Matters. The Company and each Subsidiary has timely prepared and filed all tax returns required to have been filed by the Company or such Subsidiary with all appropriate governmental agencies and timely paid all taxes shown thereon or otherwise owed by it. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company or any Subsidiary nor, to the Company's Knowledge, any basis for the assessment of any additional taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company and its Subsidiaries, taken as a whole. All taxes and other assessments and levies that the Company or any Subsidiary is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due, except where such failure to withhold or collect would not have a Material Adverse Effect. There are no tax liens or claims pending or, to the Company's Knowledge, threatened against the Company or any Subsidiary or any of their respective assets or property. Except as described on Schedule 4.11, there are no outstanding tax sharing agreements or other such arrangements between the Company and any Subsidiary or other corporation or entity.

4.12 Title to Properties. Except as disclosed in the SEC Filings, the Company and each Subsidiary has good and marketable title to all real properties and all other properties and assets owned by it, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or currently planned to be made thereof by them; and except as disclosed in the SEC Filings, the Company and each Subsidiary holds any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or currently planned to be made thereof by them.

4.13 Certificates, Authorities and Permits. The Company and each Subsidiary possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or such Subsidiary, could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.14 No Labor Disputes. No labor dispute with the employees of the Company or any Subsidiary as a group exists or, to the Company's Knowledge, is imminent.

4.15 Intellectual Property. Except as described on Schedule 4.15:

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(a) No Intellectual Property of the Company or its Subsidiaries which is necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted is involved in any cancellation, dispute or litigation, and, to the Company's Knowledge, no such action is threatened. No patent of the Company or its Subsidiaries is involved in any interference, reissue, reexamination or opposition proceeding.

(b) All of the licenses and sublicenses and consent, royalty or other agreements concerning Intellectual Property which are necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted to which the Company or any Subsidiary is a party or by which any of their assets are bound (other than generally commercially available, non-custom, off-the-shelf software application programs having a retail acquisition price of less than \$10,000 per license) (collectively, "License Agreements") are valid and binding obligations of the Company or its Subsidiaries that are parties thereto and, to the Company's Knowledge, the other parties thereto, enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally, and there exists no event or condition which constitutes a material violation or breach of or constitutes (with or without due notice or lapse of time or both) a default by the Company or any of its Subsidiaries under any such License Agreement.

(c) The Company and its Subsidiaries own or have the valid and enforceable right to use all of the Intellectual Property that is necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted and for the ownership, maintenance and operation of the Company's and its Subsidiaries' properties and assets,

which ownership or right is, except as set forth on Schedule 4.15, free and clear of all liens, encumbrances, adverse claims or obligations to license (as licensor) all such owned Intellectual Property, other than licenses entered into in the ordinary course of the Company's and its Subsidiaries' businesses.

(d) To the Company's Knowledge, the conduct of the Company's and its Subsidiaries' businesses as currently conducted does not infringe or otherwise impair or conflict with (collectively, "Infringe") any Intellectual Property rights of any third party or any confidentiality obligation owed to a third party, and, to the Company's Knowledge, the Intellectual Property and Confidential Information of the Company and its Subsidiaries which are necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted are not being Infringed by any third party. There is no litigation or order pending or outstanding against the Company or, to the Company's Knowledge, threatened or imminent against the Company, that seeks to limit or challenge or that concerns the ownership, use, validity or enforceability of any Intellectual Property of the Company and its Subsidiaries and the Company's and its Subsidiaries' use of any Intellectual Property owned by a third party, and, to the Company's Knowledge, there is no valid basis for the same.

(e) The consummation of the transactions contemplated hereby and by the other Transaction Documents will not result in the alteration, loss or impairment of or restriction on the Company's or any of its Subsidiaries' ownership or right to use any of the

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Intellectual Property or Confidential Information which is necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted.

(f) All software owned by the Company or any of its Subsidiaries, and, to the Company's Knowledge, all software licensed from third parties by the Company or any of its Subsidiaries, (i) is free from any material defect, bug, virus or programming, design or documentation error; (ii) operates and runs in a reasonable and efficient business manner; and (iii) conforms in all material respects to the specifications and purposes thereof.

(g) The Company and its Subsidiaries have taken reasonable steps to protect the Company's and its Subsidiaries' rights in their Intellectual Property and Confidential Information. Each employee, consultant and contractor who has had access to Confidential Information, the continued confidentiality of which is necessary for the conduct of the Company's and each of its Subsidiaries' respective businesses as currently conducted, has executed an agreement to maintain the confidentiality of such Confidential Information (or is subject to a fiduciary duty requiring that such confidentiality be maintained). Except under confidentiality obligations, to the Company's Knowledge, there has been no material disclosure by the Company of any of the



Company's or its Subsidiaries' Confidential Information to any third party.

4.16 Environmental Matters. Neither the Company nor any Subsidiary is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"); owns or, to the Company's Knowledge, operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, and is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim has had or could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate; and there is no pending or, to the Company's Knowledge, threatened investigation that could reasonably be expected to lead to such a claim.

4.17 Litigation. Except as described on Schedule 4.17, there are no pending actions, suits or proceedings against or affecting the Company, its Subsidiaries or any of its or their properties that could reasonably be expected to have a Material Adverse Effect; and to the Company's Knowledge, no such actions, suits or proceedings are threatened or contemplated.

4.18 Financial Statements. The financial statements included in each SEC Filing present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis (except as may be disclosed therein or in the notes thereto, and, in the case of quarterly financial statements, as permitted by Form 10-Q under the 1934 Act). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof or as described on

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Schedule 4.18, neither the Company nor any of its Subsidiaries has incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

4.19 Insurance Coverage. The Company and each Subsidiary maintains in full force and effect insurance coverage as described on Schedule 4.19 for the business being conducted and properties owned or leased by the Company and each Subsidiary, and the Company reasonably believes such insurance coverage to be adequate against all liabilities, claims and risks against which it would be prudent, given the totality of the circumstances, for the Company to

insure.

4.20 Listing. The Company's Common Stock is quoted on the Bulletin Board. The Company has not received any oral or written notice that its Common Stock will be delisted from the Bulletin Board nor that its Common Stock does not meet all requirements for the continuation of such quotation, and the Company satisfies the requirements for the continued listing of its Common Stock on the Bulletin Board.

4.21 Brokers and Finders. No Person will have, as a result of actions or omissions of the Company in connection with the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company, other than as described in Schedule 4.21.

4.22 No Directed Selling Efforts or General Solicitation. Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D) in connection with the offer or sale of any of the Securities.

4.23 No Integrated Offering. Neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf, has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security under circumstances that would cause the offer and/or sale of the Securities pursuant to this Agreement to be integrated with prior offerings by the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Bulletin Board, or that would otherwise adversely affect reliance by the Company on Section 4(2) for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.24 Private Placement. Subject to the accuracy of the representations and warranties of each Investor in Section 5, the offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act and is being made pursuant to the exemption afforded by Section 4(2) of the 1933 Act and/or Rule 506 of Regulation D promulgated thereunder.

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4.25 Questionable Payments. Neither the Company nor any of its Subsidiaries, directors or officers, nor, to the Company's Knowledge, any of their respective current or former stockholders, employees, agents or other Persons acting on behalf of the Company or any Subsidiary, has on behalf of the Company or any Subsidiary or in connection with their respective businesses: (a) used any corporate funds for unlawful contributions, gifts, entertainment or

other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets; (d) made any false or fictitious entries on the books and records of the Company or any Subsidiary; or (e) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

4.26 Transactions with Affiliates. Except as disclosed in the SEC Filings or as disclosed on Schedule 4.26, none of the officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than as holders of capital stock, stock options, warrants and/or other rights convertible into or exercisable for capital stock, and for services as employees, officers and directors), including any contract or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company's Knowledge, any entity in which any officer, director or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.27 Internal Controls. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-14 and 15d-14) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including the Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed periodic report under the 1934 Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the most recently filed periodic report under the 1934 Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the 1934 Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K) or, to the Company's Knowledge, in other factors that could significantly affect the Company's internal controls. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the 1934 Act.

4.28 No Manipulation of Stock. Neither the Company, nor any of its directors, officers or Controlling Persons (other than Persons that become Controlling Persons as a result of the transactions contemplated by this Agreement), has taken or will, in violation of applicable law, take, any action designed to or that might reasonably be expected to cause or result in, or which has constituted, stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Securities.

4.29 Company Not an "Investment Company". The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and immediately after receipt of payment for the Securities will not be, an "investment company" or (except to the extent one of the Investors is an "investment company") an entity "controlled" by an "investment company" within the meaning of the Investment Company Act and (except to the extent one of the Investors is an "investment company") shall conduct its business in a manner so that it will not become subject to the Investment Company Act.

4.30 Contracts. The contracts described in the SEC Filings that are currently material to the Company are in full force and effect on the date hereof, and neither the Company nor, to the Company's Knowledge, any other party to such contracts is in breach of or default under any of such contracts which would have a Material Adverse Effect.

4.31 Disclosures. Other than (a) disclosures made to the Major Investor at its request subject to a confidentiality agreement or to any other investor that presently has (or has appointed a representative that has) a fiduciary relationship with the Company, or (b) disclosures that the Company has agreed, to the extent material, to make public on or before June 30, 2004 and which disclosures are subject to a confidentiality agreement expiring June 30, 2004, neither the Company nor any Person acting on its behalf has provided the Investors or their agents or counsel with any information that constitutes or might constitute material, nonpublic information. The representations and warranties of the Company contained herein, including the Disclosure Schedules, as of the date hereof and as of the Closing Date do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of circumstances under which they were made, not misleading.

5. Representations, Warranties and Covenants of the Investors. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 Authority. The Investor has all requisite power and authority to invest in the Securities pursuant to this Agreement.

5.2 Authorization. The execution, delivery and performance by

the Investor of the Transaction Documents to which such Investor is a party have been duly authorized and will each constitute the valid and legally binding obligation of the Investor, enforceable against the Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

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5.3 Purchase Entirely for Own Account. The Securities to be received by the Investor hereunder will be acquired for the Investor's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act. Except as disclosed in writing on the signature page of the Investor hereto, the Investor is not a registered broker-dealer or an entity engaged in the business of being a broker dealer.

5.4 Investment Experience. The Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.5 Disclosure of Information. The Investor has had an opportunity to receive all additional information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. The Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by the Investor shall modify, amend or affect the Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.6 Restricted Securities. The Investor understands that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.7 Legends. It is understood that, except as provided below, certificates evidencing the Securities may bear the following or any similar legend:

(a) "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE

HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE COMPANY THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE U.S. SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAW, (C) IN A TRANSACTION THAT DOES NOT OTHERWISE REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAW, PROVIDED THE HOLDER HAS FURNISHED TO THE COMPANY, IF REASONABLY NECESSARY, AN OPINION OF COUNSEL TO THAT EFFECT OR (D) PURSUANT TO A REGISTRATION STATEMENT PURSUANT TO THE U.S. SECURITIES ACT."

(b) If required by the authorities of any state in connection with the issuance or sale of the Securities, the legend required by such state authority.

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(c) Upon the earlier of (i) registration for resale pursuant to the Registration Rights Agreement and receipt by the Company of the Investor's written confirmation that such Securities will not be disposed of except in compliance with the prospectus delivery requirements of the 1933 Act and governing state securities laws or (ii) Rule 144(k) becoming available, the Company shall, upon an Investor's written request, promptly cause certificates evidencing the Shares or the Warrant Shares to be replaced with certificates which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Warrants shall not bear such restrictive legends, provided the provisions of either clause (i) or clause (ii) above, as applicable, are satisfied with respect to such Warrant Shares. When the Company is required to cause unlegended certificates to replace previously issued legended certificates, if unlegended certificates are not delivered to an Investor within three (3) Business Days of submission by that Investor of legended certificate(s) to the Company's transfer agent together with a representation letter in customary form, the Company shall be liable to the Investor for liquidated damages in an amount equal to .833% of the aggregate purchase price of the Securities evidenced by such certificate(s) for each thirty (30) day period (pro rated for any portion thereof) beyond such three (3) Business Days that the unlegended certificates have not been so delivered.

5.8 Accredited Investor. The Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act.

5.9 No General Solicitation. The Investor did not learn of the investment in the Securities as a result of any public advertising or general solicitation.

5.10 Brokers and Finders. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement

or understanding entered into by or on behalf of the Investors.

5.11 Prohibited Transactions. During the last thirty (30) days prior to the date hereof or since the date the Investor knew the Securities might be available for purchase (whichever is earlier), no Investor has, directly or indirectly, nor has any Investor made any recommendation or suggestion regarding trading in the Common Stock to or known of any Person who has, effected or agreed to effect any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Stock, granted any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from the Common Stock or otherwise sought to hedge its position in the Securities (each, a "Prohibited Transaction"). Each Investor acknowledges that the representations and warranties contained in this Section 5.11 are being made for the benefit of the Investors as well as the Company and that each of the other Investors shall have an independent right to assert any claims against any Investor arising out of any breach or violation of the provisions of this Section 5.11

5.12 Affiliate Status. Each of the Investors represents and warrants that either (i) neither such Investor nor any Affiliate of such Investor beneficially owns directly or

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indirectly, or has beneficially owned directly or indirectly at any time during the three years preceding the Closing Date, 10% or more of the voting power of the outstanding shares of capital stock of the Company or (ii) if either such Investor or an Affiliate of such Investor beneficially owns directly or indirectly, or has beneficially owned directly or indirectly at any time during the three years preceding the Closing Date, 10% or more of the voting power of the outstanding shares of capital stock of the Company, such Investor or Affiliate first became the beneficial owner directly or indirectly of 10% or more of the voting power of the outstanding shares of capital stock of the Company (A) on November 1, 2002 as a result of the execution of the Asset Purchase Agreement dated as of November 1, 2002, by and among VitalStream, VitalStream Broadcasting Corp., Epoch Networks, Inc. and Epoch Hosting, Inc., (B) on November 26, 2002, as a result of the issuance, sale and purchase of certain notes and warrants pursuant to the Convertible Note and Warrant Purchase Agreement dated as of November 1, 2002 among the Company and the parties thereto, (C) on January 15, 2003 as a result of the simultaneous closing of the transactions contemplated by the Amended and Restated Convertible Note and Warrant Purchase Agreement dated January 15, 2003 and the Amended and Restated Asset Purchase Agreement dated as of January 15, 2003, by and among VitalStream, VitalStream Broadcasting Corp., Epoch Networks, Inc. and Epoch Hosting, Inc., or (D) on April 23, 2002, as a result of the consummation of the merger contemplated by the Merger Agreement, dated as of February 13, 2002, among the Company, VitalStream, Inc., and VitalStream Operating Corporation.

5.13 Market Standoff Agreement. Each Investor agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Securities without the prior written consent of the Company and the Major Investor (which consents, if granted, shall permit all Investors to sell on a pro rata basis based upon the number of Shares purchased hereunder), for a period of one hundred eighty (180) days following the Closing; provided that (i) the executive officers of the Company who own stock in the Company and any stockholder of the Company that has filed prior to the Closing a Schedule 13D or 13G indicating that it beneficially owns more than 10% of the outstanding Common Stock also agree to such restrictions and (ii) such restrictions shall not apply to (A) bona fide gifts, provided the recipient thereof agrees in writing to be bound by the terms of the Lock-up Agreement (as defined in Section 7.4), (B) dispositions to any trust for the direct or indirect benefit of the Investor and/or the immediate family of the Investor, provided that such trust agrees in writing to be bound by the terms of the Lock-up Agreement and (C) distributions by a corporation, a limited liability company or a partnership to its stockholders, members or partners; provided, however, that the transferees agree in writing to be bound by the terms of the Lock-up Agreement.

## 6. Conditions to Closing.

6.1 Conditions to the Investors' Obligations. The obligation of each of the Investors to purchase the Shares and the Warrants at the Closing is subject to the fulfillment to the Investors' reasonable satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by an Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof, qualified as to materiality, shall be true and correct on the date hereof and on the Closing Date, except to the extent any such representation or warranty expressly speaks as of a different date, in which case such representation or warranty shall be true and correct as of such

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different date, and, the representations and warranties made by the Company in Section 4 hereof not qualified as to materiality shall be true and correct in all material respects on the date hereof and on the Closing Date, except to the extent any such representation or warranty expressly speaks as of a different date, in which case such representation or warranty shall be true and correct in all material respects as of such different date. The Company shall have performed in all material respects all obligations and conditions herein required to be performed or observed by it on or prior to the Closing Date.

(b) There shall not have been any changes occurring between the date of this Agreement and the Closing Date that had, or could reasonably be expected to have, a Material Adverse Effect, individually or in



the aggregate, on the Company.

(c) The Company shall have obtained in a timely fashion any and all consents, permits, approvals, and waivers necessary or appropriate for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect (except for filings pursuant to Regulation D of the 1933 Act, and applicable state securities laws, which the Company has agreed will be made in a timely manner).

(d) The Company and each other Investor shall have executed and delivered counterpart signature pages to the Registration Rights Agreement and the Investor Rights Agreement. The Company, each Investor and a sufficient number of parties to ensure its effectiveness shall have executed counterpart signature pages to the Second Amended Registration Rights Agreement.

(e) The Company shall have delivered the certificates representing the Shares and the Warrants to be purchased by the Investor to the Placement Agent.

(f) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(g) The Company shall have delivered to the Placement Agent, for delivery to each Investor that requests the same, a copy of a Certificate, executed on behalf of the Company by its Chief Executive Officer or its Chief Financial Officer, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b), (c), (f), (j) and (k) of this Section 6.1.

(h) The Company shall have delivered to the Placement Agent, for delivery to each Investor that requests the same, a copy of a Certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board of Directors of the Company approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, certifying the current versions of the Certificate of Incorporation and Bylaws of the Company and

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certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

(i) The Investors shall have received an opinion from

Stoel Rives LLP, the Company's counsel, dated as of the Closing Date, in form and substance reasonably acceptable to the Investors and in substantially the form set forth in Exhibit E.

(j) The Holding Agent identified in the Conversion Agreement shall have received the Securityholder Deliveries (as defined in the Conversion Agreement) and the Company Deliveries (as defined in the Conversion Agreement) and the parties thereto shall be prepared to close, and shall close, the transactions described in the Conversion Agreement simultaneously with the initial Closing. Upon the consummation of all transactions contemplated by the Conversion Agreement, all outstanding shares of Series A Preferred Stock of the Company will have been converted into Common Stock, and all indebtedness of the Company to Dolphin Communications Parallel Fund II (Netherlands), L.P. and Dolphin Communications Fund II, L.P. will have been extinguished. Immediately following the consummation of all transactions contemplated by the Conversion Agreement (but not including the Shares and Warrants to be issued at Closing hereunder), the number and type of outstanding shares of capital stock of the Company, and rights to purchase or acquire capital stock of the Company, shall be as follows: there will be issued and outstanding (a) 41,922,174 shares of Common Stock, (b) no shares of Series A Preferred Stock or Series B Preferred Stock, (c) 3,940,664 options to purchase Common Stock, (d) 3,050,827 warrants to purchase Common Stock, and (e) 1,891,867 shares of Common Stock reserved for the future grants of options or other rights under the Company's stock incentive plan.

(k) No stop order or suspension of trading shall have been imposed by the SEC or any other governmental regulatory body or the Bulletin Board with respect to public trading in the Common Stock.

(l) The Purchase Price delivered by the Investors with respect to which the conditions set forth in subsections 6.2(a), 6.2(b) and 6.2(c) have been satisfied or waived shall be no less than \$9,000,000.

6.2 Conditions to Obligations of the Company. The Company's obligation to sell and issue the Shares and the Warrants at the Closing to each Investor is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions with respect to each Investor, any of which may be waived by the Company (on an Investor by Investor basis) other than the conditions set forth in subsection (d):

(a) The representations and warranties made by the Investor in Section 5 hereof shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date. The Investor shall have performed in all material respects all obligations and conditions herein required to be performed or observed by such Investor on or prior to the Closing Date.

(b) The Investor shall have executed and delivered the Registration Rights Agreement, the Investor Rights Agreement and the Second Amended Registration Rights Agreement. A sufficient number of parties to ensure its effectiveness shall have executed counterpart signature pages to the Second Amended Registration Rights Agreement.

(c) The Investor shall have delivered the Purchase Price payable by such Investor to the Company.

(d) The Purchase Price delivered by the Investors with respect to which the conditions set forth in subsections (a), (b) and (c) have been satisfied or waived shall be no less than \$9,000,000.

### 6.3 Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and the Investors agreeing hereunder to purchase eighty percent (80%) of the Shares and Warrants (the "Required Investors");

(ii) By the Company with respect to all Investors (or only Investors that have failed to satisfy the conditions set forth in Section 6.2) if any of the conditions set forth in Section 6.2 shall not have been satisfied by June 21, 2004, and shall not have been waived by the Company; or

(iii) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall not have been satisfied by June 21, 2004;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect the Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the Closing pursuant to this Section 6.3, written notice thereof shall forthwith be given to the other Investors and the other Investors shall have the right to terminate their obligations to effect the Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

## 7. Covenants and Agreements of the Company.

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7.1 Reservation of Common Stock. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of providing for the exercise of the Warrants, such number of shares of Common Stock as shall from time to time equal the number of shares sufficient to permit the exercise of the Warrants issued pursuant to this Agreement in accordance with their respective terms.

7.2 Reports. The Company will furnish to the Investors and/or their assignees such information relating to the Company and its Subsidiaries as from time to time may reasonably be requested by such Investors and/or their assignees; provided, however, that (except for any Investor whose representative or Affiliate occupies a seat or has observation rights with respect to the board of directors of the Company or any of its Subsidiaries) the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, unless (a) the Company undertakes to make such material nonpublic information public on or before June 30, 2004, or (b) prior to disclosure of such information the Company identifies such information as being material nonpublic information that will not be disclosed on or before June 30, 2004 and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7.3 No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents, including without limitation, any action or steps that would cause the offer and/or sale of the Securities to be integrated with other offerings. The Company will not conduct any offering other than the transactions contemplated hereby that will be integrated with the offer or issuance of the Securities.

7.4 Lock-Up. Within fifteen days of the initial Closing, the Company shall have entered, and shall have caused the executive officers of the Company not party to this Agreement who own stock in the Company and any stockholder of the Company not party to this Agreement that has filed prior to the Closing a Schedule 13D or 13G indicating that it beneficially owns more than 10% of the outstanding Common Stock to enter, into an agreement (the "Lock-up Agreement") with the Major Investor and the Company not to sell or otherwise transfer or dispose of any shares of the Company's capital stock, except as otherwise permitted by the Lock-up Agreement, for a period of one hundred eighty (180) days following the Closing Date.

7.5 Insurance. The Company shall not materially reduce the insurance coverages described in Section 4.19; provided, however, if the Company's management determines that there has been a reduction in the assets or risk exposure of the Company, the Company may make a commensurate reduction in such insurance coverages if the Company's management in its reasonable business judgment believes the resulting coverages would be adequate in light of the circumstances.

7.6 Compliance with Laws. The Company will comply in all material respects with all applicable laws, rules, regulations, orders and decrees of all governmental authorities.

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7.7 Listing of Underlying Shares and Related Matters. Promptly following the date hereof, the Company shall take all necessary action to cause the Shares and the Warrant Shares to be listed on each national securities exchange, or quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain such listing so long as any Securities are outstanding no later than the Effectiveness Deadline (as such term is defined in the Registration Rights Agreement). The Company will maintain the listing of its Common Stock on the Bulletin Board (the "Principal Market") or, in its discretion, the American Stock Exchange, Nasdaq SmallCap Market, Nasdaq National Market System or New York Stock Exchange and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Principal Market. The Company will provide within two (2) Business Days the Investors copies of all notices it receives notifying the Company of the threatened and actual delisting of the Common Stock from the Principal Market.

7.8 Market Regulations. The Company shall notify the SEC, the Principal Market and applicable state authorities, in accordance with their requirements, of the transactions contemplated by this Agreement and the Transaction Documents, and shall take all other necessary action and proceedings as may be required and permitted by applicable law, rule and regulation, for the legal and valid issuance of the Securities to the Investors and promptly provide copies thereof to Investors.

7.9 Termination of Covenants. The provisions of Sections 7.2 through 7.8 shall terminate and be of no further force and effect upon the earlier of (i) the mutual consent of the Company and the Required Investors or (ii) the date on which the Company's obligations under the Registration Rights Agreement to register or maintain the effectiveness of any registration covering the Registrable Securities (as such term is defined in the Registration Rights Agreement) shall terminate.

7.10 Prohibited Transactions. Prior to the earliest of (i) the termination of this Agreement, (ii) the date on which the Registration Statement has been declared effective and (iii) the Effectiveness Deadline, no Investor

shall engage, directly or indirectly, nor shall any Person acting on behalf of or pursuant to any understanding with any Investor engage, in a Prohibited Transaction. Each Investor acknowledges and agrees that in order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to any of the Common Stock of each Investor or its transferee until such time as the Registration Statement has been declared effective. Each Investor acknowledges that the covenants contained in this Section 7.10 are being made for the benefit of the Investors as well as the Company and that each of the other Investors shall have an independent right to assert any claims against any Investor arising out of any breach or violation of the provisions of this Section 7.10.

## 8. Survival and Indemnification.

8.1 Survival. The representations and warranties contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement, to the extent the Closing occurs, for a period of one year from the date of Closing. Unless terminated as provided in the following sentence, the covenants and other provisions of this Agreement shall survive during the terms set forth with respect thereto in this Agreement, and if no such term is set forth herein, for one year from the date of Closing. With respect to all parties if the Closing does not

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occur (or with respect to affected Investors if the Closing occurs but does not occur with respect to one or more Investors as a result of the failure of the conditions set forth in Section 6.2 to be satisfied with respect to such Investors), no representations, warranties, covenants or agreements shall survive termination under Section 6.3.

## 8.2 Indemnification.

(a) The Company agrees to indemnify and hold harmless each Investor and its Affiliates and their respective directors, officers, employees and agents from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable attorneys' fees and disbursements and other expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, "Losses") to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

(b) Each Investor, severally and not jointly, agrees to indemnify and hold harmless the Company and its Affiliates and its directors, officers, employees and agents from and against any and all Losses to which such Person may become subject as a result of any breach of representation, warranty,

covenant or agreement made by or to be performed on the part of such Investor under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

8.3 Conduct of Indemnification Proceedings. Promptly after receipt by any Person (the "Indemnified Person") of notice of any demand, claim or circumstances which would or might give rise to a claim or the commencement of any action, proceeding or investigation in respect of which indemnity may be sought pursuant to Section 8.2, such Indemnified Person shall promptly notify the person from which indemnification is sought (the "Indemnifying Person") in writing and the Indemnifying Person shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person, and shall assume the payment of all fees and expenses; provided, however, that the failure of any Indemnified Person to so notify promptly the Indemnifying Person shall not relieve the Indemnifying Person of its obligations hereunder except to the extent, and only to the extent, that the Indemnifying Person is materially prejudiced by such failure to notify promptly. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the retention of such counsel; or (ii) in the reasonable judgment of counsel to such Indemnified Person representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest between them. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Person shall indemnify and hold harmless such Indemnified Person from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, the Indemnifying Person shall not effect any settlement of any

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pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Person from all liability arising out of such proceeding.

## 9. Miscellaneous.

9.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investors, as applicable, provided, however, that an Investor may assign all of its rights hereunder in whole or in part to an Affiliate or to a third party acquiring at least fifty percent (50%) of its Securities in a transaction complying with applicable securities laws and this Agreement without the prior written consent of the Company or the other Investors, after notice duly given

by such Investor to the Company and the other Investors (and receipt by the Company of a counterpart signature page to this Agreement executed by the transferee), provided, that no such assignment or obligation shall affect the obligations of such Investor hereunder. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2 Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

9.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by e-mail, telex or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one business day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

VitalStream Holdings, Inc.  
One Jenner, Suite 100  
Irvine, California 92618

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Attention: Philip N. Kaplan  
Fax: (949) 453-8686  
email: philk@vitalstream.com

With a copy to:

Stoel Rives LLP



201 South Main Street  
Suite 1100  
Salt Lake City, Utah 84111  
Attn: Bryan Allen  
Facsimile: (801) 578-6999  
email: btallen@stoel.com

If to the Investors:

to the addresses set forth on the signature pages hereto.

9.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, except that the Company shall pay the reasonable fees and expenses of a single counsel for all of the Investors (to be appointed by the Major Investor), not to exceed \$40,000 in the aggregate with respect to all Transaction Documents. Such expenses shall be paid not later than the Closing. The Company shall reimburse the Investors upon demand for all reasonable out-of-pocket expenses incurred by the Investors, including without limitation reimbursement of attorneys' fees and disbursements, in connection with any amendment, modification or waiver of this Agreement or the other Transaction Documents requested by the Company. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Investors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

9.7 Publicity. No public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Investors without the prior consent of the Company (in the case of a release or announcement by the Investors) or the Major Investor and Dolphin Equity Partners (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investors, as the case may be, shall allow the Major

Investor, Dolphin Equity Partners and the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on such release or announcement in advance of such issuance.

9.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 Entire Agreement. This Agreement, including the Exhibits and the Disclosure Schedules, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state or federal courts located in the State of California for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in any such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company:

VITALSTREAM HOLDINGS, INC.

By: /s/ Paul Summers

-----  
Name: Paul Summers

Title: President

[SIGNATURE PAGE TO PURCHASE AGREEMENT]

Investor:

WALDENVC II, L.P.

By: WaldenVC LLC,  
Its General Partner

By: /s/ Philip Sanderson

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Name: Phil Sanderson

Title: General Partner

Purchase Price: \$6,000,000  
Number of Shares: 9,782,821  
Number of Warrants: 2,934,846

Address for Notice:

750 Battery Street, Suite 700  
San Francisco, CA 94111  
Telephone: (415) 391-7225  
Facsimile: (415) 391-7262

with a copy to:

Howard Rice Nemerovski Canady Falk &  
Rabkin  
Three Embaradero Center, Seventh Floor  
San Francisco, CA 94111-4024  
Attn: Michael J. Sullivan, Esq.  
Telephone: (415) 399-3017  
Facsimile: (415) 217-5910  
Email: msullivan@howardrice.com

Investor:

DOLPHIN COMMUNICATIONS FUND II, L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell  
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Name: Dennis O'Connell

Title:

Purchase Price: \$1,887,900

Number of Shares: 3,078,164

Number of Warrants: 923,449

Purchase Price Net of Applied

Conversion Proceeds (if applicable): \$1,592,227

Address for Notice:

750 Lexington Avenue  
16th Floor  
New York, NY 10022  
Attention: Mr. Richard J. Brekka  
Telephone: (212) 446-1600  
Facsimile: (212) 446-1638

with a copy to:

Kirkland & Ellis  
Citigroup Center  
153 East 53rd Street  
New York, NY 10022  
Attention: John Kuehn, Esq.  
Telephone: (212) 446-4821  
Facsimile: (212) 446-4900  
Email: jkuehn@kirkland.com

Investor:

DOLPHIN COMMUNICATIONS PARALLEL  
FUND II (NETHERLANDS), L.P.

By: Dolphin Communications II, L.P.,

Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell  
-----

Name: Dennis O'Connell

Title:

Purchase Price: \$212,100  
Number of Shares: 345,823  
Number of Warrants: 103,747

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$178,882

Address for Notice:

750 Lexington Avenue  
16th Floor  
New York, NY 10022  
Attention: Mr. Richard J. Brekka  
Telephone: (212) 446-1600  
Facsimile: (212) 446-1638

with a copy to:

Kirkland & Ellis  
Citigroup Center 153 East 53rd Street  
New York, NY 10022  
Attention: John Kuehn, Esq.  
Telephone: (212) 446-4821  
Facsimile: (212) 446-4900  
Email: jkuehn@kirkland.com

[SIGNATURE PAGE TO PURCHASE AGREEMENT]

Investor:

ThinkEquity Investment Partners IV LLC

By: ThinkEquity Holdings, LLC, Manager

By: /s/ Robert Schooler  
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Name: Robert Schooler

Title: CFO

Purchase Price: \$461,000  
Number of Shares: 751,647

Number of Warrants: 255,494

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

475 Sansome Street, Suite 800  
San Francisco, CA 94111  
Telephone: 415-249-2900  
Facsimile: 415-249-0975  
Email: bschooler@thinkequity.com

with a copy to:

Att: Peter Bailey  
ThinkEquity Partners LLC  
475 Sansome Street, Suite 800  
San Francisco, CA 94111  
Telephone: 415-249-1351  
Facsimile: 415-249-0975  
Email: pbailey@thinkequity.com

[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

Investor: Newlight Associates II, L.P.

By: /s/ Robert M. Brill

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Name: Robert M. Brill  
Title: General Partner

Purchase Price: \$661,400  
Number of Shares: 1,078,393  
Number of Warrants: 323,518

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

-----

Address for Notice:

Newlight Associates II, LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412

Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

Investor: Newlight Associates II, (BVI), L.P.

By: /s/ Robert M. Brill

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Name: Robert M. Brill  
Title: General Partner

Purchase Price: \$232,200  
Number of Shares: 378,595  
Number of Warrants: 113,579

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

Newlight Associates II, (BVI), LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412  
Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

Investor: Newlight Associates II-E, L.P.

By: /s/ Robert M. Brill

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Name: Robert M. Brill  
Title: General Partner

Purchase Price: \$106,400  
Number of Shares: 173,482  
Number of Warrants: 52,045

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$  
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Address for Notice:

Newlight Associates II-E, LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412  
Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

Investor: NanoCap Fund, LP

By: /s/ P. Bart Stephens

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Name: P. Bart Stephens  
Title: Managing Partner

Purchase Price: \$290,000  
Number of Shares: 472,836  
Number of Warrants: 141,851

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$  
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Address for Notice:

Stephens Investment Management



One Sansome St. Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 835-3819  
Facsimile: (415) 835-3827  
Email: bart@stephensim.com

with a copy to:

Dan Nero  
Hedgeworks, LLC  
1900 Wright Place, Suite 100  
Carlsbad, CA 92008  
Attn: SIM file  
Telephone: (760) 804-7695  
Facsimile: (760) 804-9304  
Email: dtnero@hedgeworks.com

Investor:

Nanocap Qualified Fund, LP

By: /s/ P. Bart Stephens

-----  
Name: P. Bart Stephens  
Title: Managing Partner

Purchase Price: \$210,000  
Number of Shares: 342,399  
Number of Warrants: 102,720

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

Stephens Investment Management  
One Sansome St. Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 835-3819  
Facsimile: (415) 835-3827  
Email: bart@stephensim.com

with a copy to:

Dan Nero  
Hedgeworks, LLC  
1900 Wright Place, Suite 100  
Carlsbad, CA 92008  
Attn: SIM file  
Telephone: (760) 804-7695

Investor:

RS Orphan Fund, LP.

By: /s/ Paul H. Stephens

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Name: Paul H. Stephens  
Title: Investment Advisory General  
Partner

Purchase Price: \$500,000  
Number of Shares: 815,236  
Number of Warrants: 244,570

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

c/o RS Investments  
389 Market Street, Suite 1700  
San Francisco, CA 94111  
Telephone: 415-591-2700  
Facsimile: 415-591-2852  
Email: mwilliamson@rsinvestments.com  
pstephens@rsinvestments.com

with a copy to:

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[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

Investor:

Michael Linos, an individual

By: /s/ Michael Linos

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Purchase Price: \$202,000  
Number of Shares: 329,355  
Number of Warrants: 98,807

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

41 Parkcrest  
Irvine, CA 92620

Telephone: 714-368-1392  
Facsimile: 714-368-1394  
Email: michael@linos.net

[other investors]

[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

The Investor:

Mark Belzowski, an individual

/s/ Mark Belzowski

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Address for Notice:

27 Abeto  
Irvine, CA 92620

Telephone: 714-573-1250

Email: markbelzowski@cox.net

[other investors]

[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

The Investors:

Arturo Sida, an individual

/s/ Arturo Sida

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Purchase Price: \$25,000  
Number of Shares: 40,762  
Number of Warrants: 12,229

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$

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Address for Notice:

26625 Honey Creek Rd.  
Rancho Palos Verdes, CA 90275

Telephone: 310-541-7609

Email: a.sida@cox.net

[other investors]

[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

The Investors:

Dave Williams, an individual

/s/ Dave Williams  
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Purchase Price: \$92,000  
Number of Shares: 150,003  
Number of Warrants: 45,001

Purchase Price Net of Applied  
Conversion Proceeds (if applicable): \$  
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Address for Notice:

363 Newport Glen Court  
Newport Beach, CA 92660

Telephone: 949-646-3168

Email: kr73@sbcglobal.net

[other investors]

[SIGNATURE PAGE TO PURCHASE AGREEMENT FOR INVESTOR]

EXHIBIT A  
TO  
PURCHASE AGREEMENT

Form of Warrants

[see attached]

EXHIBIT B  
TO  
PURCHASE AGREEMENT

Form of Registration Rights Agreement

[see attached]

EXHIBIT C  
TO  
PURCHASE AGREEMENT

Form of Investor Rights Agreement

[see attached]

EXHIBIT D  
TO  
PURCHASE AGREEMENT

Form of Second Amended Registration Rights Agreement

[see attached]

EXHIBIT E  
TO  
PURCHASE AGREEMENT

Form of Opinion

[see attached]

EXHIBIT F  
TO  
PURCHASE AGREEMENT

Conversion Agreement and Exhibits  
(other than Second Amended Registration Rights Agreement)

[see attached]

## CONVERSION AGREEMENT

THIS CONVERSION AGREEMENT (this "Agreement") is made as of the 14th day of June, 2004 by and among VitalStream Holdings, Inc., a Nevada corporation (the "Company"), Dolphin Communications Parallel Fund II (Netherlands), L.P. and Dolphin Communications Fund II, L. P. (collectively "Dolphin") and the holders of Series A Preferred party hereto identified as Series A Holders on the signature page hereof (each a "Series A Holder"; collectively, the "Series A Holders"; and collectively with Dolphin, the "Securityholders"). Capitalized terms not defined when first used in the text hereof have the meaning set forth in Section 5 of this Agreement.

## RECITALS

A. The Company has entered into, or intends to enter into, a Purchase Agreement (the "Walden Purchase Agreement") substantially in the form provided to the Securityholders, pursuant to which the Company agrees to issue Common Stock and warrants in exchange for up to \$11,000,000 in cash and/or cancellation of debt or payables; and

B. WaldenVC II, L.P. ("Walden"), which is expected to be the most significant investor under the Walden Purchase Agreement, has requested that the Company, Dolphin and the Series A Holders enter into an agreement pursuant to which (i) Dolphin agrees to convert and/or accept prepayment of all obligations under the \$1,100,000 in Amended and Restated Convertible Promissory Notes dated September 30, 2003 issued to Dolphin (the "Notes"), (ii) the Series A Holders agree to convert and/or accept redemption of all issued and outstanding shares of Series A Preferred, and (iii) Dolphin and the Series A Holders amend and cancel certain provisions of certain agreements ancillary to their purchase of the Notes and the Series A Preferred; and

C. Subject to the terms and conditions of this Agreement, the Company, Dolphin and the Series A Holders have agreed to convert the Notes, convert the Series A Preferred and amend and cancel certain provisions of certain ancillary agreements as provided herein.

## AGREEMENT

Now therefore, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Agreements to Convert.

(a) Conversion of the Notes. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined in Section 1(c)),

Dolphin shall surrender the Notes for conversion into shares of Common Stock in accordance with the terms of Section 5 of the Notes (as supplemented hereby). In exchange for Dolphin's surrender and conversion of the Notes, the Company shall (a) within five Business Days of the Closing Date (as defined in Section 1(c)), deliver to the Person surrendering and converting each Note a certificate representing the shares of Common Stock into which the outstanding principal amount under the

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Note is convertible, and (b) within fifteen (15) days of the Closing, cause a wire transfer in same day funds in the aggregate amount of \$267,131 (allocated pro rata among the holders of the Notes) to be sent to the accounts designated by the holder surrendering each Note, which \$267,131 payment the parties agree represents the following: (y) \$109,249 as accrued but unpaid interest on the Notes from July 1, 2003 through September 30, 2004, (z) \$157,882 as a premium equal to 14% of the sum of (i) the principal amount of the Notes and (ii) the accrued and unpaid interest on the Notes from July 1, 2003 through September 30, 2003; provided, however, any Securityholder party to the Walden Purchase Agreement may, in its discretion by written notice to the Company prior to the Walden Closing, elect to have any funds such Securityholder would otherwise receive pursuant to subsection 1(a)(b) applied toward the Purchase Price (as defined in the Walden Purchase Agreement) of such Securityholder under the Walden Purchase Agreement (which notice Dolphin is deemed to have given, and election Dolphin is deemed to have made, by executing and delivering a counterpart signature page to this Agreement). Any certificates representing shares of Common Stock issued upon conversion of the Notes shall have such legends as are required by the Dolphin Transaction Documents and the Walden Transaction Documents to which the respective Securityholder is a party.

(b) Conversion of the Shares of Series A Preferred.

(i) Subject to the terms and conditions of this Agreement, on the Closing Date, Dolphin and each Series A Holder shall surrender to the Company certificates representing, and convert into Common Stock in accordance with Part B.5(a) of the Certificate of Designation (as supplemented hereby), all outstanding shares of Series A Preferred issued to each of them under the Dolphin Purchase Agreement. In exchange for such Securityholder's surrender and conversion of such shares of Series A Preferred, the Company shall (a) within five Business Days of the Closing, deliver to the Securityholder surrendering and converting each share of Series A Preferred a certificate representing the shares of Common Stock into which the Series A Liquidation Value (as defined in the Certificate of Designation) of such share of Series A Preferred is convertible and (b) within fifteen (15) days of the Closing, cause a wire transfer in same day funds in the aggregate amount of \$101,061 (allocated pro rata among the outstanding shares of the Series A Preferred) to be sent to the accounts designated by the Securityholders converting and surrendering each shares of Series A Preferred, which \$101,061 payment represents the following: (y) \$65,061 as accrued but unpaid dividend on the Series A Preferred from July

1, 2003 through September 30, 2004, and (z) \$36,000 as a premium equal to 4% of the sum of the Series A Liquidation Value (as defined in the Certificate of Designation); provided, however, any Securityholder party to the Walden Purchase Agreement may, in its discretion by written notice to the Company prior to the Walden Closing, elect to have any funds such Securityholder would otherwise received pursuant to subsection 1(b)(i)(b) applied toward the Purchase Price (as defined in the Walden Purchase Agreement) of such Securityholder under the Walden Purchase Agreement (which notice Dolphin is deemed to have given, and election Dolphin is deemed to have made, by executing and delivering a counterpart signature page to this Agreement). Any certificates representing shares of Common Stock issued upon conversion of the Series a Preferred shall have such legends as are required by the Dolphin Transaction Documents and the Walden Transaction Documents to which the respective Securityholder is a party.

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(ii) Subject to the terms and conditions of this Agreement, if any holder of Series A Preferred is not party to this Agreement on the Closing Date, Dolphin and the Series A Holders, which constitute a majority of the holders of the Series A Preferred, hereby vote as of the moment immediately prior to the Closing to compel the conversion of all outstanding shares of Series A Preferred in accordance with Part B.5(b)(ii) of the Certificate of Designation, in which case the conversion described in Section 1(b)(i) shall be deemed to have been pursuant to Part B.5(b)(ii) of the Certification of Designation. For purposes of clarification, no holder of Series A Preferred shall be entitled to such holder's pro rata portion of the premium described in Section 1(b)(i)(z) hereof unless such holder is a party to this Agreement and complies with all of such holder's material obligations hereunder.

(c) Closing.

(i) Pre-Closing Deliveries. Within two Business Days of the execution of this Agreement by the Company and the Required Securityholders (the "Effective Date"), Dolphin and each Securityholder shall deliver to Stoel Rives LLP (the "Holding Agent"), in trust, (i) the originals of all Notes and all certificates representing outstanding shares of Series A Preferred issued to him or it under the Dolphin Purchase Agreement, (ii) wiring instructions for all cash payments contemplated by Section 1 hereof and delivery instructions for delivery of all certificates required to be delivered by the Company pursuant to Section 1 hereof, and (iii) all closing deliveries required to be delivered by such Securityholder pursuant to Section 2(a) and 2(b) hereof ((i), (ii) and (iii) collectively, the "Securityholder Deliveries"), and the Company shall deliver to the Holding Agent all closing delivered required to be delivered by the Company pursuant to Section 2(c) hereof (the "Company Deliveries"). The date the Holding Agent has received the Securityholder Deliveries from Dolphin and the Series A Holders party hereto shall be referred to as the "Pre-Closing Date."

(ii) The obligation of the Company and the



Securityholders to close the transactions contemplated by this Agreement (the "Closing") shall be conditioned upon (a) the receipt by the Holding Agent of the Securityholder Deliveries from Dolphin and the Series A Holders party hereto, (b) the receipt by the Holding Agent of the Company Deliveries from the Company, and (c) all conditions precedent to the Walden Closing, other than any conditions precedent requiring that the Closing and the Walden Closing occur simultaneously, being satisfied or waived by parties to the Walden Purchase Agreement authorized to waive such conditions and the parties to the Walden Purchase Agreement being prepare to consummate the Walden Closing. The Closing shall occur on the date (the "Closing Date") of, and simultaneously with, the Walden Closing. At the Closing, the Holding Agent shall, and is hereby authorized and directed to, release the Securityholder Deliveries to the Company (via facsimile followed by next Business Day express courier delivery) and shall, and is hereby authorized and directed to, release the Company Deliveries to Dolphin and the Series A Holders (via facsimile follow by next Business Day express courier delivery). Promptly following the Closing, but in no event later than the deadline set forth in Section 1(a) or Section 1(b), as applicable, the Company shall transfer to the Securityholders any funds required to be transferred pursuant to Section 1(a) or Section 1(b) (net of any such amount applied to the Purchase Price (as defined in the Walden Purchase Agreement) under the Walden Purchase Agreement) and the certificates representing the shares of Common Stock issuable upon conversion of the Notes and shares of Series A Preferred converted by the Securityholders. The Closing shall be deemed to

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have taken place at the offices of the Company. If additional holders of Series A Preferred become party to this Agreement as "Series A Holders" after the Closing Date, the Closing between the Company and such Series A Holder shall occur at such time, and in such manner, as determined by the Company and such Series A Holder, in which case the terms "Closing" and "Closing Date" shall, for each Series A Holder, refer to or be based upon the Closing(s) in which such Series A Holder participates.

## 2. Closing Deliveries.

(a) Within two Business Days of the Effective Date, Dolphin shall deliver to the Holding Agent, for delivery to the Company at Closing, the following (with the understanding that a document or instrument is duly executed if signed by an authorized representative of the Affiliate of Dolphin that is party to such document or instrument and/or which holds the document or instrument being amended by such document or instrument):

(i) A duly executed counterpart signature page to the Amendment to Common Stock Purchase Warrant (Amended and Restated) in the form attached hereto as Exhibit A with respect to each of the Amended and Restated Warrants issued to Dolphin under the Dolphin Purchase Agreement;

(ii) A duly executed counterpart signature page to the Amendment to Common Stock Purchase Warrant (Additional Warrants) in the form attached hereto as Exhibit B with respect to each of the Additional Warrants issued to Dolphin under the Dolphin Purchase Agreement;

(iii) A duly executed counterpart signature page to the Amendment to Amended and Restated Investor Rights Agreement in the form attached hereto as Exhibit C;

(iv) A duly executed counterpart signature page to the Second Amended and Restated Registration Agreement in the form attached hereto as Exhibit D;

(v) The original Notes and the certificates representing all of the shares of Series A Preferred issued to Dolphin pursuant to the Purchase Agreement, each executed and notated by the holder thereof as necessary for conversion into Common Stock and cancellation pursuant to the terms of this Agreement; and

(vi) Such other documents, agreements, assignments, instruments and certificates as may be required by this Agreement or as may be reasonably requested by the Company to effect the transactions contemplated by, and the terms and conditions of, this Agreement.

(b) Within two Business Days of the Effective Date, each Series A Holder shall deliver to the Holding Agent, for delivery to the Company at Closing, the following (with the understanding that a document or instrument is duly executed if signed by an authorized representative of the Series A Holder party to such document or instrument and/or which holds the document or instrument being amended by such document or instrument):

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(i) A duly executed counterpart signature page to the Amendment to Common Stock Purchase Warrant (Additional Warrants) in the form attached hereto as Exhibit B with respect to each of the Additional Warrants (as defined in the Dolphin Purchase Agreement) issued to such Series A Holder under the Dolphin Purchase Agreement;

(ii) A duly executed counterpart signature page to the Amendment to Amended and Restated Investor Rights Agreement in the form attached hereto as Exhibit C;

(iii) A duly executed counterpart signature page to the Second Amended and Restated Registration Agreement in the form attached hereto as Exhibit D;

(iv) The original certificates representing all of the shares of Series A Preferred issued to such Series A Holder pursuant to the

Purchase Agreement, each executed and notated by the holder thereof as necessary for conversion into Common Stock and cancellation pursuant to the terms of this Agreement; and

(v) Such other documents, agreements, assignments, instruments and certificates as may be required by this Agreement or as may be reasonably requested by the Company to effect the transactions contemplated by, and the terms and conditions of, this Agreement.

(c) Within two Business Days of the Effective Date, the Company shall deliver to the Holding Agent, for delivery to Dolphin or the Series A Holder party to the relevant document, the following (with the understanding that a document or instrument is duly executed if signed by an authorized representative of the Company):

(i) A duly executed counterpart signature page to the Amendment to Common Stock Purchase Warrant (Amended and Restated) in the form attached hereto as Exhibit A with respect to each of the Amended and Restated Warrants issued to Dolphin under the Dolphin Purchase Agreement;

(ii) A duly executed counterpart signature page to the Amendment to Common Stock Purchase Warrant (Additional Warrants) in the form attached hereto as Exhibit B with respect to each of the Additional Warrants issued to Dolphin or any Series A Holder under the Dolphin Purchase Agreement;

(iii) A duly executed counterpart signature page to the Amendment to Amended and Restated Investor Rights Agreement in the form attached hereto as Exhibit C;

(iv) A duly executed counterpart signature page to the Second Amended and Restated Registration Agreement in the form attached hereto as Exhibit D: and

(v) Such other documents, agreements, assignments, instruments and certificates as may be required by this Agreement or as may be reasonably requested by Dolphin or a Series A Holder effect the transactions contemplated by, and the terms and conditions of, this Agreement.

### 3. Certain Representations, Warranties and Covenants.

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(a) Representations and Warranties of the Company. The Company hereby represents and warrants to the Securityholders as follows:

(i) Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to

own its properties.

(ii) Authorization. The Company has full power and authority and has taken all requisite action on the part of the Company, its officers, directors and stockholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance and delivery of the shares of Common Stock issuable hereunder. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

(iii) Authorization of Common Stock. The issuance of the shares of Common Stock upon conversion of the Notes and the Series A Preferred has been duly and validly authorized and, when such shares are issued following conversion and surrender of the Notes and the certificates representing the shares of Series A Preferred pursuant to this Agreement, such shares will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions (other than those created by the Securityholders), except for restrictions on transfer required by the Dolphin Transaction Documents and the Walden Transaction Documents to which such Securityholder is a party or imposed by applicable securities laws.

(iv) No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company, including the issuance of shares of Common Stock upon conversion of the Notes and shares of Series A Preferred, will not conflict with or result in a breach or violation of any of the terms and provisions of, or constitute a default under (i) the Company's Certificate of Incorporation or the Company's Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Dolphin through the EDGAR system), or (ii) (a) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any subsidiary of the Company or any of their respective assets or properties, or (b) any agreement or instrument to which the Company or any subsidiary of the Company is a party or by which the Company or a subsidiary of the Company is bound or to which any of their respective assets or properties are subject.

(b) Representations and Warranties of the Securityholders. Each of the securityholders severally represents and warrants to the Company as follows:

(i) Ownership of Securities. Such Securityholder holds all right, title and interest in and to each Note and share of Series A Preferred issued to such Securityholder pursuant to the Dolphin Purchase Agreement (and surrendered and converted pursuant to this

Agreement), free and clear of any liens and encumbrances and, except as set forth in this Agreement or the Dolphin Transaction Documents, has not granted to any Person acquisition rights with respect to, or security interest in, such Notes and shares of Series A Preferred.

(ii) Authorization. Such Securityholder has full power and authority and has taken all requisite action on the part of such Securityholder necessary for (i) the authorization, execution and delivery of the Transaction Documents, and (ii) the authorization of the performance of all obligations of such Securityholder hereunder or thereunder. The Transaction Documents to which such Securityholder is a party constitute the legal, valid and binding obligations of such Securityholder, enforceable against such Securityholder in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

(c) Termination of Certain Agreements. At Closing, upon conversion of the Notes, the Guaranty (as defined in the Dolphin Purchase Agreement) and the Dolphin Security Agreement (as defined in the Dolphin Purchase Agreement) shall immediately and automatically terminate.

(d) Consent and Waiver. Dolphin and the Series A Holders hereby (i) consent to the grant of the demand registration rights pursuant to the Walden Registration Rights Agreement, and (ii) consent to the sale of Securities contemplated by the Walden Transaction Documents and waive any breach that may arise under the Dolphin Transaction Documents as a result of the execution, delivery or consummation of the transactions contemplated by the Walden Transaction Documents. In addition, the Securityholders (other than Dolphin) hereby waive any piggyback or participation rights that would otherwise arise under Section 3 or any other section of the Dolphin Registration Agreement as a result of the registration required by the Walden Registration Rights Agreement.

#### 4. Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Securityholders, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and the Required Securityholders;

(ii) By either the Company or Dolphin if the Closing shall not have occurred by June 30, 2004.

provided, however, that, except in the case of clause (i) above, the party or parties seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to

effect the Closing.

(b) Nothing in this Section 4 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this

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Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

5. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

"Additional Warrant" has the meaning set forth in the Dolphin Purchase Agreement.

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person.

"Amended and Restated Warrants" has the meaning as set forth in the Dolphin Purchase Agreement.

"Business Day" means a day, other than a Saturday or Sunday, on which banks in Los Angeles are open for the general transaction of business.

"Certificate of Designation" means the Certificate of Designation Amending the Articles of Incorporation of VitalStream Holdings, Inc. Establishing the Series 2003 Series A Preferred Stock and the 2003 Series B Preferred Stock.

"Common Stock" shall mean the Common Stock of the Company, \$.001 par value.

"Dolphin Guaranty" has the same meaning as the term "Guaranty" in the Dolphin Purchase Agreement.

"Dolphin Purchase Agreement" means the Securities Exchange and Purchase Agreement dated September 30, 2003 among the Company and the Purchasers referred to therein.

"Dolphin Registration Agreement" has the same meaning as the term "Registration Agreement" in the Dolphin Purchase Agreement.

"Dolphin Security Agreement" has meaning set forth in the Dolphin Purchase Agreement.

"Dolphin Transaction Documents" has the same meaning as the term "Transaction Agreements" in the Dolphin Purchase Agreement.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Required Securityholders" means Dolphin and the holders of Series A Preferred holding a majority of the outstanding shares of Series A Preferred not held by Dolphin.

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"Series A Preferred Stock" means the shares of 2003 Series A Preferred Stock, \$.001 par value, of the Company.

"Transaction Documents" means this Agreement, the Amendment to Common Stock Purchase Warrant (Amended and Restated) with respect to each of the Amended and Restated Warrants, the Amendment to Common Stock Purchase Warrant (Additional Warrant) with respect to each of the Additional Warrants, the Amendment to Amended and Restated Investor Rights Agreement and the Amendment to Amended and Restated Registration Agreement.

"Walden Closing" means the initial Closing (as defined in the Walden Purchase Agreement) of the transactions described in the Walden Purchase Agreement.

"Walden Registration Agreement" means that certain Registration Rights Agreement by and among VitalStream and the other parties thereto, in the form of Exhibit B attached to the Walden Purchase Agreement, as executed, amended, modified, restated, superseded or replaced from time to time.

"Walden Transaction Documents" has the same meaning as "Transaction Documents" in the Walden Purchase Agreement.

## 6. Miscellaneous.

6.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company and the Required Securityholders. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of

which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

6.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in the manner provided for in Section 8(G) of the Dolphin Purchase Agreement.

6.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, except that the Company shall pay the reasonable fees and expenses of a single counsel for Dolphin, not to exceed \$5,000 in the aggregate with respect to all Dolphin Transaction Documents and Walden Transaction Documents. Such expenses shall be paid not later than the Closing. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the

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other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

6.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Securityholders.

6.7 Publicity. No public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Securityholders without the prior consent of the Company (in the case of a release or announcement by the Securityholders) or Dolphin (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Securityholders, as the case may be, shall allow the Dolphin and the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on such release or announcement in advance of such issuance.

6.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it



were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.9 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

6.10 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

6.11 Governing Law. TO THE EXTENT APPLICABLE, THE CORPORATE LAW OF THE STATE OF NEVADA SHALL GOVERN ALL ISSUES AND QUESTIONS CONCERNING THE RELATIVE RIGHTS AND OBLIGATIONS OF THE COMPANY AND THEIR SECURITYHOLDERS. ALL OTHER ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT AND ANY OF THE OTHER TRANSACTION DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO

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ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT AND EACH OF THE OTHER TRANSACTION DOCUMENTS, EVEN THOUGH UNDER THAT JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

6.12 Jurisdiction and Venue. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE COMPANY WITH RESPECT TO THIS AGREEMENT OR ANY OTHER TRANSACTION AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN NEW YORK CITY, NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS TO WHICH THEY ARE A PARTY, THE COMPANY AND EACH SECURITYHOLDER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION AGREEMENTS. THE COMPANY AND EACH SECURITYHOLDER HEREBY WAIVE ANY CLAIM THAT NEW YORK CITY, NEW YORK IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE.

6.13 Waiver of Right To Jury Trial. THE COMPANY AND EACH SECURITYHOLDER HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS OR THE VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR THEREOF; AND THE COMPANY HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO INTERPOSE ANY SETOFF IN CONNECTION WITH ANY SUCH LITIGATION, IRRESPECTIVE OF THE NATURE OF SUCH SETOFF EXCEPT TO THE EXTENT THAT THE FAILURE SO TO ASSERT ANY SUCH SETOFF WOULD PERMANENTLY PRECLUDE THE PROSECUTION OF OR RECOVERY UPON SAME. THE COMPANY AGREES THAT THIS SECTION 6.13 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT AND EACH OF THE OTHER TRANSACTION DOCUMENTS AND ACKNOWLEDGES THAT EACH SECURITYHOLDER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT OR MADE AN INVESTMENT HEREUNDER IF THIS SECTION 6.13 WERE NOT PART OF THIS AGREEMENT.

[signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Conversion Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

COMPANY:

VITALSTREAM HOLDINGS, INC.

By: /s/ Paul S. Summers

-----  
Name: Paul S. Summers

Title: President

DOLPHIN:

DOLPHIN COMMUNICATIONS FUND II, L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

-----  
Name: Dennis O'Connell

Title:

DOLPHIN COMMUNICATIONS PARALLEL FUND II  
(NETHERLANDS), L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

-----  
Name: Dennis O'Connell

Title:

[SIGNATURE PAGE FOR CONVERSION AGREEMENT]

SERIES A HOLDERS

/s/ Philip N. Kaplan

-----  
Philip N. Kaplan, an individual

/s/ Steve Smith

-----  
Steve Smith, an individual

-----  
Kevin D. Herzog, an individual

/s/ Michael F. Linos

-----  
Michael F. Linos, an individual

/s/ Arturo Sida

-----  
Arturo Sida, an individual

[SIGNATURE PAGE FOR CONVERSION AGREEMENT]

EXHIBIT A  
TO  
CONVERSION AGREEMENT

Form of Amendment to Common Stock Purchase Warrant (Amended and Restated)

[see attached]

EXHIBIT B

TO  
CONVERSION AGREEMENT

Form of Amendment to Common Stock Purchase Warrant (Additional Warrant)

[see attached]

EXHIBIT C  
TO  
CONVERSION AGREEMENT

Form of Amendment to Amended and Restated Investor Rights Agreement

[see attached]

EXHIBIT D  
TO  
CONVERSION AGREEMENT

Form of Second Amended and Restated Registration Agreement

[see attached]

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE COMPANY THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE U.S. SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, (C) IN A TRANSACTION THAT DOES NOT OTHERWISE REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS, PROVIDED THE HOLDER HAS FURNISHED TO THE COMPANY AN OPINION OF COUNSEL OR (D) PURSUANT TO A REGISTRATION STATEMENT PURSUANT TO THE U.S. SECURITIES ACT.

SUBJECT TO THE PROVISIONS OF SECTION 10 HEREOF, THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. EASTERN TIME ON THE FIFTH ANNIVERSARY OF THE CLOSING DATE (THE "EXPIRATION DATE").

No. \_\_\_\_\_

VITALSTREAM HOLDINGS, INC.

WARRANT TO PURCHASE \_\_\_\_\_ SHARES OF  
COMMON STOCK, PAR VALUE \$0.001 PER SHARE

For VALUE RECEIVED, \_\_\_\_\_ (the "Warrantholder") is entitled to purchase, subject to the provisions of this Warrant, from VitalStream Holdings, Inc., a Nevada corporation (the "Company"), at any time not later than 5:00 P.M., Eastern time, on the Expiration Date (as defined above), at an exercise price per share equal to \$0.61332 (the exercise price in effect being herein called the "Warrant Price"), \_\_\_\_\_ (1) shares ("Warrant Shares") of the Company's Common Stock, par value \$0.001 per share ("Common Stock"). The number of Warrant Shares purchasable upon exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time as described herein.

Section 1. Registration. The Company shall maintain books for the transfer and registration of the Warrant. Upon the initial issuance of this Warrant, the Company shall issue and register the Warrant in the name of the Warrantholder.

Section 2. Transfers. This Warrant may be transferred only as permitted by the legend on the top of the first page of this Warrant. Subject to such restrictions, the Company shall transfer this Warrant from time to time upon the books to be maintained by the Company

-----  
(1) A number of shares equal to 30% of the Shares purchased by such Investor at the Closing (as defined in the Purchase Agreement).

for that purpose, upon surrender thereof for transfer properly endorsed or accompanied by appropriate instructions for transfer and such other documents as may be reasonably required by the Company, including, if reasonably required by the Company, an opinion of its counsel to the effect that such transfer is exempt from the registration requirements of the Securities Act, to establish that such transfer is being made in accordance with the terms hereof, and a new Warrant shall be issued to the transferee and the surrendered Warrant shall be canceled by the Company.

### Section 3. Exercise of Warrant.

(a) Subject to the provisions hereof, the Warrantholder may exercise this Warrant in whole or in part at any time prior to its expiration upon surrender of the Warrant, together with delivery of the duly executed Warrant exercise form attached hereto as Appendix A (the "Exercise Agreement") and payment by cash, certified check or wire transfer of funds for the aggregate Warrant Price for that number of Warrant Shares then being purchased, to the Company during normal business hours on any business day at the Company's principal executive offices (or such other office or agency of the Company as it may designate by notice to the Warrantholder). The Warrant Shares so purchased shall be deemed to be issued to the Warrantholder or the Warrantholder's designee, as the record owner of such shares, as of the close of business on the date on which this Warrant shall have been surrendered (or evidence of loss, theft or destruction thereof and security or indemnity reasonably satisfactory to the Company), the Warrant Price shall have been paid and the completed Exercise Agreement shall have been delivered. Certificates for the Warrant Shares so purchased, representing the aggregate number of shares specified in the Exercise Agreement, shall be delivered to the Warrantholder within a reasonable time, not exceeding three (3) business days, after this Warrant shall have been so exercised. The certificates so delivered shall be in such denominations as may be requested by the Warrantholder and shall be registered in the name of the Warrantholder or such other name as shall be designated by the Warrantholder. If this Warrant shall have been exercised only in part, then, unless this Warrant has expired, the Company shall, at its expense, at the time of delivery of such certificates, deliver to the Warrantholder a new Warrant representing the number of shares with respect to which this Warrant shall not then have been exercised. As used herein, "business day" means a day, other than a Saturday or Sunday, on which banks in Los Angeles are open for the general transaction of business.

(b) Notwithstanding any other provision in this Warrant, the Warrantholder agrees to exercise this Warrant in full not later than the later of (i) the six-month anniversary of the date of this Warrant and (ii) 10 days following the occurrence of a "\$1.50 Event". For purposes of this Warrant, a "\$1.50 Event" shall mean that the closing sale price of the Company's Common Stock on the principal U.S. trading market for the Common Stock shall have been

\$1.50 per share (as adjusted for stock splits and dividends, reverse stock splits and the like) or greater for ten consecutive trading days.

Section 4. Compliance with the Securities Act of 1933. Except as provided in the Purchase Agreement, the Company may cause the legend set forth on the first page of this Warrant to be set forth on each Warrant on any security issued or issuable upon exercise of this

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Warrant, unless counsel for the Company is of the reasonable opinion as to any such security that such legend is not required under applicable federal and state securities laws.

Section 5. Payment of Taxes. The Company will pay any documentary stamp taxes attributable to the initial issuance of Warrant Shares issuable upon the exercise of the Warrant; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for Warrant Shares in a name other than that of the Warrantholder in respect of which such shares are issued, and in such case, the Company shall not be required to issue or deliver any certificate for Warrant Shares or any Warrant until the person requesting the same has paid to the Company the amount of such tax or has established to the Company's reasonable satisfaction that such tax has been paid. The Warrantholder shall be responsible for income taxes due under federal, state and other law, if any such tax is due.

Section 6. Mutilated or Missing Warrants. In case this Warrant shall be mutilated, lost, stolen, or destroyed, the Company shall issue in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor and for the purchase of a like number of Warrant Shares, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of the Warrant, and with respect to a lost, stolen or destroyed Warrant, reasonable indemnity or bond with respect thereto, if requested by the Company.

Section 7. Reservation of Common Stock. The Company hereby represents and warrants that there have been reserved, and the Company shall at all applicable times keep reserved until issued (if necessary) as contemplated by this Section 7, out of the authorized and unissued shares of Common Stock, sufficient shares to provide for the exercise of the rights of purchase represented by this Warrant. The Company agrees that all Warrant Shares issued upon due exercise of the Warrant shall be, at the time of delivery of the certificates for such Warrant Shares, duly authorized, validly issued, fully paid and non-assessable shares of Common Stock of the Company, free and clear of any liens or encumbrances other than liens or encumbrances arising under the Securities Act of 1933, as amended, or caused by acts or omissions of the Warrant holder.

Section 8. Adjustments. Subject and pursuant to the provisions of this Section 8, the Warrant Price and number of Warrant Shares subject to this Warrant shall be subject to adjustment from time to time as set forth hereinafter.

(a) If the Company shall, at any time or from time to time while this Warrant is outstanding, pay a dividend or make a distribution on its Common Stock in shares of Common Stock, subdivide its outstanding shares of Common Stock into a greater number of shares or combine its outstanding shares of Common Stock into a smaller number of shares or issue by reclassification of its outstanding shares of Common Stock any shares of its capital stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), then the number of Warrant Shares purchasable upon exercise of the Warrant and the Warrant Price in effect immediately prior to the date upon which such change shall become effective, shall be adjusted by the Company so that the Warrantholder

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thereafter exercising the Warrant shall be entitled to receive the number of shares of Common Stock or other capital stock which the Warrantholder would have received if the Warrant had been exercised immediately prior to such event upon payment of a Warrant Price that has been adjusted to reflect a fair allocation of the economics of such event to the Warrantholder. Such adjustments shall be made successively whenever any event listed above shall occur.

(b) If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another corporation in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation shall be effected, then, as a condition of such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition, lawful and adequate provision shall be made whereby each Warrantholder shall thereafter have the right to purchase and receive upon the basis and upon the terms and conditions herein specified and in lieu of the Warrant Shares immediately theretofore issuable upon exercise of the Warrant, such shares of stock, securities or assets as would have been issuable or payable with respect to or in exchange for a number of Warrant Shares equal to the number of Warrant Shares immediately theretofore issuable upon exercise of the Warrant, had such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of each Warrantholder to the end that the provisions hereof (including, without limitation, provision for adjustment of the Warrant Price) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise hereof. The Company shall not effect any such consolidation, merger, sale, transfer or other disposition unless prior to or simultaneously with the consummation thereof the successor corporation (if other than the Company) resulting from such consolidation or merger, or the corporation purchasing or otherwise acquiring such assets or other appropriate



corporation or entity shall assume the obligation to deliver to the Warrantholder, at the last address of the Warrantholder appearing on the books of the Company, such shares of stock, securities or assets as, in accordance with the foregoing provisions, the Warrantholder may be entitled to purchase, and the other obligations under this Warrant. The provisions of this paragraph (b) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales, transfers or other dispositions.

(c) In case the Company shall fix a payment date for the making of a distribution to all holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness or assets (other than cash dividends or cash distributions payable out of consolidated earnings or earned surplus or dividends or distributions referred to in Section 8(a)), or subscription rights or warrants, the Warrant Price to be in effect after such payment date shall be determined by multiplying the Warrant Price in effect immediately prior to such payment date by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding multiplied by the Market Price (as defined below) per share of Common Stock immediately prior to such payment date, less the fair market value (as reasonably determined by the Company's Board of Directors in good faith) of said assets or evidences of indebtedness so distributed, or of such subscription rights or warrants, and the denominator of which shall be the total number of shares of Common Stock outstanding multiplied by such Market Price per share

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of Common Stock immediately prior to such payment date. "Market Price" as of a particular date (the "Valuation Date") shall mean the following: (a) if the Common Stock is then listed on a national stock exchange, the closing sale price of one share of Common Stock on such exchange on the last trading day prior to the Valuation Date; (b) if the Common Stock is then quoted on the Principal Market (as defined in the Purchase Agreement), the closing sale price of one share of Common Stock on the Principal Market on the last trading day prior to the Valuation Date or, if no such closing sale price is available, the average of the high bid and the low asked price quoted on the Principal Market on the last trading day prior to the Valuation Date; or (c) if the Common Stock is not then listed on or quoted on the Principal Market, the fair market value of one share of Common Stock as of the Valuation Date, shall be determined in good faith by the Board of Directors of the Company and the Warrantholder. If the Common Stock is not then listed or quoted on the Principal Market, the Board of Directors of the Company shall respond promptly (but in any event within three (3) business days), in writing, to an inquiry by the Warrantholder prior to the exercise hereunder as to the fair market value of a share of Common Stock as determined by the Board of Directors of the Company. In the event that the Board of Directors of the Company and the Warrantholder are unable to agree upon the fair market value in respect of subpart (c) hereof, the Company and the Warrantholder shall jointly select an appraiser, who is experienced in such matters. The decision of such appraiser shall be final and conclusive, and the cost of such appraiser shall be borne equally by the Company and the

Warrantholder. Such adjustment shall be made successively whenever such a payment date is fixed.

(d) An adjustment to the Warrant Price shall become effective immediately after the payment date in the case of each dividend or distribution and immediately after the effective date of each other event which requires an adjustment.

(e) In the event that, as a result of an adjustment made pursuant to this Section 8, the Warrantholder shall become entitled to receive any shares of capital stock of the Company other than shares of Common Stock, the number of such other shares so receivable upon exercise of this Warrant shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Warrant Shares contained in this Warrant.

Section 9. Fractional Interest. The Company shall not be required to issue fractions of Warrant Shares upon the exercise of this Warrant. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Section 9, be deliverable upon such exercise, the Company, in lieu of delivering such fractional share, shall pay to the exercising Warrantholder an amount in cash equal to the Market Price of such fractional share of Common Stock on the date of exercise.

Section 10. Extension of Expiration Date. If the Company fails to cause any Registration Statement covering Registrable Securities (unless otherwise defined or noted herein, capitalized terms are as defined in the Registration Rights Agreement relating to the Warrant Shares (the "Registration Rights Agreement")) to be declared effective prior to the applicable dates set forth therein, or if any of the events specified in Section 2(c)(ii) of the Registration Rights Agreement occurs, and the Blackout Period (whether alone, or in combination with any

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other Blackout Period) continues for more than 60 days in any 12 month period, or for more than a total of 90 days, then the Expiration Date of this Warrant shall be extended one day for each day beyond the 60-day or 90-day limits, as the case may be, that the Blackout Period continues.

Section 11. Benefits. Nothing in this Warrant shall be construed to give any person, firm or corporation (other than the Company and the Warrantholder) any legal or equitable right, remedy or claim, it being agreed that this Warrant shall be for the sole and exclusive benefit of the Company and the Warrantholder.

Section 12. Notices to Warrantholder. Upon the happening of any event requiring an adjustment of the Warrant Price (and in any event within ten (10) business days thereafter), the Company shall promptly give written notice thereof to the Warrantholder at the address appearing in the records of the

Company, stating the adjusted Warrant Price and the adjusted number of Warrant Shares resulting from such event and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Failure to give such notice to the Warrantholder or any defect therein shall not affect the legality or validity of the subject adjustment.

Section 13. Identity of Transfer Agent. The Transfer Agent for the Common Stock is Progressive Transfer Company. Upon the appointment of any subsequent transfer agent for the Common Stock or other shares of the Company's capital stock issuable upon the exercise of the rights of purchase represented by the Warrant, the Company will mail to the Warrantholder a statement setting forth the name and address of such transfer agent.

Section 14. Notices. Unless otherwise provided, any notice required or permitted under this Warrant shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by facsimile, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one business day after delivery to such carrier. All notices shall be addressed as follows: if to the Warrantholder, at its address as set forth in the Company's books and records and, if to the Company, at the address as follows, or at such other address as the Warrantholder or the Company may designate by ten days' advance written notice to the other:

If to the Company:

VitalStream Holdings, Inc.  
One Jenner, Suite 100  
Irvine, California 92618  
Attention: General Counsel  
Fax: (949) 453-8686

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With a copy to:

Stoel Rives LLP  
201 South Main Street  
Suite 1100  
Salt Lake City, Utah 84111  
Attn: Bryan Allen  
Facsimile: (801) 578-6999

Section 15. Registration Rights. The initial Warrantholder is entitled to the benefit of certain registration rights with respect to the shares of Common

Stock issuable upon the exercise of this Warrant as provided in the Registration Rights Agreement.

Section 16. Successors. All the covenants and provisions hereof by or for the benefit of the Warrantholder shall bind and inure to the benefit of its respective successors and assigns hereunder.

Section 17. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Warrant shall be governed by, and construed in accordance with, the internal laws of the State of California, without reference to the choice of law provisions thereof. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably submits to the exclusive jurisdiction of the state or federal courts located in the State of California for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Warrant and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Warrant. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE WARRANTHOLDER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS WARRANT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

Section 18. No Rights as Stockholder. Prior to the exercise of this Warrant, the Warrantholder shall not have or exercise any rights as a stockholder of the Company by virtue of its ownership of this Warrant.

Section 19. Amendment; Waiver. This Warrant is one of a series of Warrants of like tenor issued by the Company pursuant to the Purchase Agreement (collectively, the "Company Warrants"). Any term of this Warrant may be amended or waived (including the adjustment provisions included in Section 8 of this Warrant) upon the written consent of the Company and the holders of Company Warrants representing at least seventy percent (70%) of the number of

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shares of Common Stock then subject to all outstanding Company Warrants; provided, that (x) any such amendment or waiver must apply to all Company Warrants; and (y) the number of Warrant Shares subject to this Warrant may not be decreased, the Warrant Price may not be increased, the Expiration Date may not be accelerated, Section 3(b) may not be amended, and the right to exercise this Warrant may not be altered or waived, without the written consent of the Warrantholder.

Section 20. Section Headings. The section headings in this Warrant are for the convenience of the Company and the Warrantholder and in no way alter, modify, amend, limit or restrict the provisions hereof.

[signature page follows]

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IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed, as of the 14th day of June, 2004.

VITALSTREAM HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO WARRANT]

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APPENDIX A  
VITALSTREAM HOLDINGS, INC.  
WARRANT EXERCISE FORM

To VitalStream Holdings, Inc.:

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the within Warrant (the "Warrant") for, and to purchase thereunder and surrender of the Warrant, \_\_\_\_\_ shares of Common Stock (the "Warrant Shares") provided for therein, and requests that certificates for the Warrant Shares be issued as follows:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Federal Tax ID or Social Security No.

and delivered by (certified mail to the above address, or (electronically (provide DWAC instructions: \_\_\_\_\_), or (other (specify): \_\_\_\_\_)).

With this notice, the undersigned has tendered in lawful money of the United States an aggregate amount of \$\_\_\_\_\_.

If the number of Warrant Shares shall not be all the Warrant Shares purchasable upon exercise of the Warrant, that a new Warrant for the balance of the Warrant Shares purchasable upon exercise of this Warrant be registered in the name of the undersigned Warrantholder or the undersigned's Assignee as below indicated and delivered to the address stated below.

[signature page follows]

Dated: \_\_\_\_\_, \_\_\_\_\_

Note: The signature must correspond with the name of the Warrantholder as written on the first page of the Warrant in every particular, without alteration or enlargement or any change whatever, unless the Warrant has been assigned.

Signature: \_\_\_\_\_

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Federal Identification or  
Social Security No.

Assignee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[SIGNATURE PAGE TO WARRANT EXERCISE FORM]

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made and entered into as of this 14th day of June, 2004 by and among VitalStream Holdings, Inc., a Nevada corporation (the "Company"), and the "Investors" named in that certain Purchase Agreement by and among the Company and the Investors dated the date hereof (the "Purchase Agreement") to the extent party thereto.

The parties hereby agree as follows:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means, with respect to any person, any other person which directly or indirectly Controls, is Controlled by, or is under common Control with, such person.

"Business Day" means a day, other than a Saturday or Sunday, on which banks in Los Angeles are open for the general transaction of business.

"Common Stock" shall mean the Company's common stock, par value \$0.001 per share, and any securities into which such shares may hereinafter be reclassified.

"Control" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Dolphin Piggyback Securities" means the Registrable Securities (for purposes of this sentence only, as defined in the Second Amended Registration Rights Agreement) held by the Dolphin Holders (as defined in the Second Amended Registration Rights Agreement).

"Investors" shall mean the Investors party hereto and any Affiliate or permitted transferee of any Investor who is a party to this Agreement and subsequent holder of any Warrants or Registrable Securities.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Prospectus" shall mean the prospectus included in any Registration

Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus.

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"Register," "registered" and "registration" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act, and the declaration or ordering of effectiveness of such Registration Statement or document.

"Registrable Securities" shall mean the Shares and the shares of Common Stock issuable (i) upon the exercise of the Warrants, if any, and (ii) any other securities issued or issuable with respect to or in exchange for Registrable Securities; provided, that, a security shall cease to be a Registrable Security upon (A) sale pursuant to a Registration Statement or Rule 144 under the 1933 Act, or (B) such security becoming eligible for sale by the Investors pursuant to Rule 144(k).

"Registration Statement" shall mean any registration statement of the Company filed under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such Registration Statement.

"Required Investors" means the Investors holding seventy percent (70%) of the Registrable Securities.

"SEC" means the U.S. Securities and Exchange Commission.

"Second Amended Registration Rights Agreement" means the Amended and Restated Registration Agreement dated September 30, 2003 among the Company and the other parties thereto, as superseded by the Second Amended and Restated Registration Rights Agreement dated on or about the date hereof among the Company and the Stockholders party thereto.

"Shares" means the shares of Common Stock issued to the Investors pursuant to the Purchase Agreement.

"1933 Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"1934 Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Warrants" means, the warrants to purchase shares of Common Stock



issued to the Investors pursuant to the Purchase Agreement.

## 2. Registration.

(a) Registration Statement. Promptly following the closing of the purchase and sale of the securities contemplated by the Purchase Agreement (the "Closing Date") but no later than thirty (30) days after the Closing Date (the "Filing Deadline"), the Company shall prepare and file with the SEC one Registration Statement on Form S-2 (or, if Form S-2 is not then available to the Company, on such form of registration statement as is then available to effect a registration for resale of the Registrable Securities) covering the resale of the Registrable Securities in an amount at least equal to the number of Shares plus the number of shares of

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Common Stock issuable upon exercise in full of the Warrants. Such Registration Statement shall include the plan of distribution substantially in the form attached hereto as Exhibit A. Such Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. The Registration Statement (and each amendment) shall be provided in accordance with Section 3(c) to the Investors and their counsel for their review and comment prior to its filing or other submission; provided, however, in the event that the Company receives a notice that the Registration Statement or amendment to the Registration Statement will not be reviewed by the SEC, the Company may make immaterial updates to the prior version of the Registration Statement or amendment and file such updated Registration Statement or amendment without providing the Investors or their counsel an opportunity to review the Registration Statement or amendment. If a Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, the Company will make pro rata payments to each Investor, as liquidated damages and not as a penalty, in an amount equal to .833% of the aggregate amount invested by such Investor for each 30-day period or pro rata for any portion thereof following the date by which such Registration Statement should have been filed for which no Registration Statement is filed with respect to the Registrable Securities. Such payments shall be made on the last day of each calendar month and shall be in lieu of any other monetary damages the Investors may seek or obtain as a result of the respective delay; provided, however, nothing herein shall prohibit an Investor from seeking specific performance of the Company's obligations under this Agreement. Such payments shall be made to each Investor in cash.

(b) Expenses. The Company will pay all expenses associated with the registration of the Registrable Securities, including filing and printing fees, the Company's counsel and accounting fees and expenses, and fees and expenses (including reasonable counsel fees) associated with clearing the Registrable Securities for sale under applicable state securities or "blue sky" laws, listing fees, transfer taxes, fees of transfer agents and registrars, fees and

expenses of one counsel to the Investors (with such counsel to be appointed by the Investor holding the most Registrable Securities and with such fees to be included as part of, and not to exceed when combined with all other fees associated with the Purchase Agreement and the other Transaction Documents (as defined in the Purchase Agreement), the cap described in Section 9.5 of the Purchase Agreement). The Company shall not be required to pay any other fees or expenses of the Investors in connection with the registration, including, without limitation, discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use its best efforts to have the Registration Statement declared effective as soon as practicable. The Company shall notify the Investors by facsimile or e-mail as promptly as practicable, and in any event, within two (2) Business Days, after any Registration Statement is declared effective and shall simultaneously provide the Investors with copies of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby. If (A) a Registration Statement covering the Registrable Securities is not declared effective by the SEC within ninety (90) days after the

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Filing Deadline (the "Effectiveness Deadline"), or (B) after a Registration Statement has been declared effective by the SEC, sales cannot be made pursuant to such Registration Statement for any reason (including without limitation by reason of a stop order, or the Company's failure to update the Registration Statement), but excluding the inability of any Investor to sell the Registrable Securities covered thereby due to market conditions and except as excused pursuant to subparagraphs (ii) and (iii) below, then the Company will make pro rata payments to each Investor, as liquidated damages and not as a penalty, in an amount equal to .833% of the aggregate amount invested by such Investor for each 30- day period or pro rata for any portion thereof following the date by which such Registration Statement should have been effective (the "Blackout Period"). Such payments shall be made within ten days of the end of each partial or full calendar month with respect to which such payments are due and shall be in lieu of any other monetary damages the Investors may seek or obtain as a result of the respective delay; provided, however, nothing herein shall prohibit an Investor from seeking specific performance of the Company's obligations under this Agreement. The amounts payable as liquidated damages pursuant to this paragraph shall be paid monthly within five (5) Business Days of the last day of each month following the commencement of the Blackout Period until the termination of the Blackout Period. Such payments shall be made to each Investor in cash.

(ii) For not more than twenty (20) consecutive days or for a total of not more than forty-five (45) days in any twelve (12) month period, the Company may delay the disclosure of material non-public information concerning

the Company, by suspending the use of any Prospectus included in any registration contemplated by this Section containing such information, the disclosure of which at the time is not, in the good faith opinion of the Company, upon advice of counsel, in the best interests of the Company (an "Allowed Delay"); provided, that the Company shall promptly (a) notify the Investors in writing of the existence of (but in no event, without the prior written consent of an Investor, shall the Company disclose to such Investor any of the facts or circumstances regarding) material non-public information giving rise to an Allowed Delay, (b) advise the Investors in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use its best efforts to terminate an Allowed Delay as promptly as practicable.

(iii) At any time (a) the Company is required to amend the Registration Statement pursuant to Section 10(a)(3) under the Securities Act, or (b) the Company is required to amend the Registration Statement to describe a fundamental change in the information set forth in the Registration Statement (including, without limitation, any transaction with respect to which the Company is required to update the Registration Statement to include financial statements and pro forma financial statements required by Rule 3-05 of Regulation S-X), the Company shall be allowed up to thirty (30) days from the date the amendment is required in order to file an amendment to the Registration Statement and until the sixtieth day following the date the amendment is required in order to cause the amended Registration Statement to be effective (such 60-day period, the "Update Delay"); provided, that the Company shall promptly after the occurrence of the event requiring amendment (a) notify the Investors in writing of the existence of (but in no event, without the prior written consent of an Investor, shall the Company disclose to such Investor any of the facts or circumstances regarding) such material non-public information giving rise to an Update Delay, (b) advise the Investors in writing to cease all sales under the Registration Statement until the end of the Update Delay and (c) use its best efforts to terminate an Update Delay as promptly as practicable.

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(d) Underwritten Offering. If the Company elects, in its discretion, to engage an underwriter with respect to any offering pursuant to a Registration Statement pursuant to Section 2(a) hereof, the Company shall have the right to select an investment banker and manager to administer the offering, which investment banker or manager shall be reasonably satisfactory to the Required Investors.

3. Company Obligations. The Company will use its best efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use its best efforts to cause such Registration Statement to become effective and to remain continuously effective for a period (the "Effectiveness Period") that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Registration Statement as amended from time to time, have been sold and (ii) the date on which all

Registrable Securities covered by such Registration Statement may be sold pursuant to Rule 144(k) and advise the Investors in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Registration Statement and the Prospectus as may be necessary to keep the Registration Statement effective for the period specified in Section 3(a) and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) provide copies to and permit a single counsel designated by the Investor holding the largest amount of the Registrable Securities (which shall be Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, unless the Company is otherwise notified) and a single counsel designated by Dolphin Equity Partners, L.P. (which shall be Kirkland & Ellis LLP, unless the Company is otherwise notified) to review each Registration Statement and all amendments and supplements thereto no fewer than four (4) Business Days prior to their filing with the SEC and not file any document to which any such counsel reasonably objects; provided, however, in the event that the Company receives a notice that the Registration Statement or amendment to the Registration Statement will not be reviewed by the SEC, the Company may make immaterial updates to the prior version of the Registration Statement or amendment and file such updated Registration Statement or amendment without providing such counsel an opportunity to review the Registration Statement or amendment.

(d) furnish to the Investors and their legal counsel (which may be by email or portable document format (pdf) file) (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company (but not later than two (2) Business Days after the filing date, receipt date or sending date, as the case may be) one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment or which includes material nonpublic information), and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and

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such other documents as each Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor that are covered by the related Registration Statement;

(e) in the event the Company selects an underwriter for the offering, the Company shall enter into and perform its reasonable obligations under an underwriting agreement, in usual and customary form, including, without

limitation, customary indemnification and contribution obligations, with the underwriter of such offering;

(f) if required by the underwriter, the Company shall furnish, on the effective date of the Registration Statement (except with respect to clause (i) below) and on the date that Registrable Securities are delivered to an underwriter, if any, for sale in connection with the Registration Statement, (i) (A) in the case of an underwritten offering, an opinion, dated as of the closing date of the sale of Registrable Securities to the underwriters, from independent legal counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the underwriters and the Investors participating in such underwritten offering or (B) in the case of an "at the market" offering, an opinion, dated as of or promptly after the effective date of the Registration Statement to the Investors, from independent legal counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in a public offering, addressed to the Investors, and (ii) a letter, dated as of the effective date of such Registration Statement and confirmed as of the applicable dates described above, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters (including any Investor deemed to be an underwriter);

(g) use its best efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(h) prior to any public offering of Registrable Securities, use its best efforts to register or qualify or cooperate with the Investors and their counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions requested by the Investors and do any and all other acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(h), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(h), or (iii) file a general consent to service of process in any such jurisdiction;

(i) if applicable, list all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

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(j) immediately notify the Investors, at any time when a Prospectus

relating to Registrable Securities is required to be delivered under the 1933 Act, upon discovery that, or upon the happening of any event as a result of which, the Prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and at the request of any such holder, promptly prepare and furnish to such holder a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(k) otherwise use its best efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and

(l) with a view to making available to the Investors the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investors to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six months after such date as all of the Registrable Securities may be resold pursuant to Rule 144(k) or any other rule of similar effect or (B) such date as all of the Registrable Securities shall have been resold; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish to each Investor upon request, as long as such Investor owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Investor of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration.

4. Due Diligence Review; Information. The Company shall make available, during normal business hours, for inspection and review by the Investors, advisors to and representatives of the Investors (who may or may not be affiliated with the Investors), and any underwriter participating in any disposition of shares of Common Stock on behalf of the Investors pursuant to a Registration Statement or amendments or supplements thereto or any blue sky, NASD or other filing, all financial and other records, all SEC Filings (as defined in the Purchase Agreement) and other filings with the SEC, and all other corporate documents and properties of the Company as may be reasonably necessary for the purpose of such review, and cause the Company's officers, directors and employees, within a reasonable time period, to supply all such information reasonably requested by the Investors or any such representative, advisor or underwriter in connection with such Registration Statement (including, without limitation, in response to all questions and other inquiries reasonably made or

submitted by any of them), prior to and from time to time after the filing and effectiveness of the Registration Statement for the sole purpose of enabling the Investors and such representatives, advisors and underwriters and their respective accountants and attorneys to conduct initial and ongoing due diligence with respect to the Company and the accuracy of such Registration Statement.

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Except for disclosures to any Investor whose representative or Affiliate occupies a seat or has observation rights with respect to the board of directors of the Company or any of its subsidiaries, the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

#### 5. Obligations of the Investors.

(a) Each Investor shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least ten (10) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Investor of the information the Company requires from such Investor if such Investor elects to have any of the Registrable Securities included in the Registration Statement. An Investor shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Investor elects to have any of the Registrable Securities included in the Registration Statement.

(b) Each Investor, by its acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) In the event the Company, at the request of the Investors, determines to engage the services of an underwriter, such Investor agrees to enter into and perform its obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or

facilitate the dispositions of the Registrable Securities.

(d) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(ii) or an Update Delay pursuant to Section 2(c)(iii) or (ii) the happening of an event pursuant to Section 3(j) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities, until the Investor's receipt of the copies of the supplemented or amended prospectus filed with the SEC and until any related post-effective amendment is declared effective and, if so directed by the Company, the Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession of the Prospectus covering the Registrable Securities current at the time of receipt of such notice.

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(e) No Investor may participate in any third party underwritten registration hereunder unless it (i) agrees to sell the Registrable Securities on the basis provided in any underwriting arrangements in usual and customary form entered into by the Company, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions. Notwithstanding the foregoing, no Investor shall be required to make any representations to such underwriter, other than those with respect to itself and the Registrable Securities owned by it, including its right to sell the Registrable Securities, and any indemnification in favor of the underwriter by the Investors shall be several and not joint and limited in the case of any Investor, to the net proceeds received by such Investor from the sale of its Registrable Securities. The scope of any such indemnification in favor of an underwriter shall be limited to the same extent as the indemnity provided in Section 6(b) hereof.

## 6. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Investor and its officers, directors, members, employees and agents, successors and assigns, and each other person, if any, who controls such Investor within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information



herein called a "Blue Sky Application"); (iii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; or (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration and will reimburse such Investor, and each such officer, director, member, employee or agent and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Investor or any such controlling person in writing specifically for use in such Registration Statement or Prospectus.

(b) Indemnification by the Investors. In connection with any registration pursuant to the terms of this Agreement, each Investor will furnish to the Company in writing such information as the Company reasonably requests concerning the holders of Registrable Securities or the proposed manner of distribution for use in connection with any Registration Statement or Prospectus and agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees and each person who

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controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or preliminary prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Investor be greater in amount than the dollar amount of the net proceeds (net of all expense paid by such Investor in connection with any claim relating to this Section 6 and the amount of any damages such Investor has otherwise been required to pay by reason of such untrue statement or omission) received by such Investor upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to

participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, or (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice promptly as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice promptly shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, not to be unreasonably withheld, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no

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event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the net proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 6 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation (or that could be received by such Investor upon the sale of the Registrable Securities included in such Registration Statement at fair market value on the date of determination of liability to the extent any Registrable Securities remain unsold).

## 7. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Required Investors. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Required Investors. Notwithstanding the foregoing, this Agreement shall not be amended, nor will any consent to any amendment, action or omission to act be granted, without the consent of the holders of the Dolphin Piggyback Securities if such amendment, action or omission would affect the holders of the Dolphin Piggyback Securities differently than it would affect the Required Investors.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in Section 9.4 of the Purchase Agreement.

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that such Investor complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected and the assignee executes a counterpart to this Agreement assuming all rights and obligations of an Investor hereunder.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Investors, provided, however, that the Company may assign its rights and delegate its duties hereunder to any surviving or successor corporation in connection with a merger or consolidation of the Company with another corporation, or a sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation, without the prior written consent of the Required Investors, after notice duly given by the Company to each Investor; provided that such successor corporation assumes the Company's obligations hereunder.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies,

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obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which

together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts of the State of California for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

(1) Other Registration Rights. The Company represents and warrants that, except for the agreements disclosed in Schedule 7(1) to this Agreement (the "Other Registration Rights Agreements"), it is not a party to, or otherwise subject to, any other agreement granting registration rights to any other Person with respect to any securities of the Company. The Company shall include in the Registration Statement required by Section 2(a) of the Agreement the Dolphin Piggyback Securities and may include in the Registration Statement required by Section 2(a) of the Agreement any securities it is required to include pursuant to any of the Other Registration Rights Agreements. The Company shall not include in the Registration Statement required by Section 2(a) of this Agreement any securities other than securities it is required to register pursuant to one or more of the Other Registration Rights Agreements.

[signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company:

VITALSTREAM HOLDINGS, INC.

By: /s/ Paul S. Summers

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Name: Paul S. Summers

Title: President

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

DOLPHIN COMMUNICATIONS FUND II, L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

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Name: Dennis O'Connell

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

DOLPHIN COMMUNICATIONS PARALLEL

FUND II (NETHERLANDS), L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

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Name: Dennis O'Connell

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

WALDENVC II, L.P.

By: WaldenVC LLC,  
Its General Partner

By: /s/ Philip Sanderson

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Name: Phil Sanderson

Title: General Partner

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

ThinkEquity Investment Partners IV LLC

By: ThinkEquity Holdings LLC, Manager

By: /s/ Robert Schooler

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Name: Robert Schooler

Title: CFO

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

Newlight Associates II, L.P.

By: /s/ Robert M. Brill

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Name: Robert M. Brill

Title: General Partner

Investor: Newlight Associates II, (BVI), L.P.

By: /s/ Robert M. Brill  
-----

Name: Robert M. Brill  
Title: General Partner

Investor: Newlight Associates II-E, L.P.

By: /s/ Robert M. Brill  
-----

Name: Robert M. Brill  
Title: General Partner

Investor: NanoCap Fund LP

By: /s/ P. Bart Stephens  
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Name: P. Bart Stephens  
Title: Managing Partner

Investor: Nanoap Qualified Fund LP

By: /s/ P. Bart Stephens  
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Name: P. Bart Stephens  
Title: Managing Partner

Investor: RS Orphan Fund, L.P.

By: /s/ Paul H. Stephens  
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Name: Paul H. Stephens  
Title: Investment Advisory General  
Partner

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

Michael F. Linos

By: /s/ Michael F. Linos

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Name:

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

Mark Z. Belzowski

By: /s/ Mark Z. Belzowski

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Name:

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

Arturo Sida

By: /s/ Arturo Sida

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Name:

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Investor:

David R. Williams

By: /s/ David R. Williams

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Name:

Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]



## Exhibit A

### PLAN OF DISTRIBUTION

#### GENERAL

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from

time to time, under this prospectus, or under an amendment to this

prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling stockholders may also sell shares by means of short sales to the extent permitted by United States securities laws. Short sales involve the sale by a selling shareholder, usually with a future delivery date, of shares of common stock that the seller does not own. Covered short sales are sales made in an amount not greater than the number of shares subject to the short seller's warrant, exchange right or other right to acquire shares of common stock. A selling shareholder may close out any covered short position by either exercising its warrants or exchange rights to acquire shares of common stock or purchasing shares in the open market. In determining the source of shares to close out the covered short position, a selling shareholder will likely consider, among other things, the price of shares of common stock available for purchase in the open market as compared to the price at which it may purchase shares of common stock pursuant to its warrants or exchange rights.

Naked short sales are any sales in excess of the number of shares subject to the short seller's warrant, exchange right or other right to acquire shares of common stock. A selling shareholder must close out any naked position by purchasing shares. A naked short position is more likely to be created if a selling shareholder is concerned that there may be downward pressure on the price of the shares of common stock in the open market.

The existence of a significant number of short sales generally causes the price of the shares of common stock to decline, in part because it indicates that a number of market participants are taking a position that will be profitable only if the price of the shares of common stock declines. Purchases to cover short sales may, however, increase the demand for the shares of common stock and have the effect of raising or maintaining the price of the shares of common stock.

The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

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To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealers or underwriters, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

#### DETERMINATION OF OFFERING PRICE AND PROCEEDS OF SALE

The offering price of the shares of common stock offered by this prospectus is being determined by each of the selling stockholders on a transaction-by-transaction basis based upon factors that such selling stockholder considers appropriate. The offering prices determined by the selling stockholders may, or may not, relate to a current market price but should not, in any case, be considered an indication of the actual value of the shares of common stock. We do not have any influence over the price at which selling stockholders offer or sell the shares of common stock offered by this prospectus.

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

#### EXPENSES, INDEMNIFICATION AND REGISTRATION OBLIGATIONS

We are paying the expenses incurred in connection with preparing and filing this prospectus and the registration statement to which it relates, other than selling commissions. We have not retained any underwriter, broker or dealer to facilitate the offer or sale of the offered shares offered hereby. We will pay no underwriting commissions or discounts in connection therewith.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus. The selling stockholders may indemnify any broker-dealers that participate in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold pursuant to Rule 144(k) of the Securities Act.

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#### PASSIVE MARKET MAKING

We have advised the selling stockholders that while they are engaged in a distribution of the shares offered pursuant to this prospectus, they are required to comply with Regulation M promulgated under the Securities Exchange Act of 1934, as amended. With certain exceptions, Regulation M precludes the selling stockholders, any affiliate purchasers and any broker-dealers or other persons who participate in the distribution from bidding for or purchasing, or attempting to induce any person to bid for or purchase, any security that is subject to the distribution until the entire distribution is complete. Regulation M also restricts bids or purchases made in order to stabilize the price of a security in connection with the distribution of that security. We do not intend to engage in any passive market making or stabilization transactions during the course of the distribution described in this prospectus. All of the foregoing may affect the marketability of the shares offered pursuant to this prospectus.

#### LIMITATIONS

We have advised the selling stockholders that, to the extent necessary to comply with governing state securities laws, the offered securities should be offered and sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, we have advised the selling stockholders that the offered securities may not be offered or sold in any state unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available with respect to such offers or sales.

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#### SCHEDULE 7(1)

## Other Registration Rights Agreements

Registration Rights Agreement dated April 23, 2002 entered into by and among Sensar Corporation, Brookstreet Securities Corporation and Gary T. Madrid, as amended by Finder's Fee Agreement dated January 17, 2003 entered into by and between Brookstreet Securities Corporation and VitalStream Holdings, Inc.

The Stockholders and Registration Rights Agreement dated August 9, 2000, by and among VitalStream, Inc., Paul Summers, Philip Kaplan and the Series B Holders (as defined therein), as assumed by the Company and as amended, modified, restated superseded or replaced from time to time ["AKKAD Agreement"]

Agreement dated May 6, 2002 between VitalStream Holdings, Inc. and The Seidler Companies

Warrant to Purchase Common Stock (Retainer Warrant) (25,000 shares), Warrant to Purchase Common Stock (Success Warrant) (200,000 shares) and Warrant to Purchase Common Stock (Success Warrant) (200,000 shares), each issued pursuant to the Seidler Agreement.

Engagement agreement between ThinkEquity Partners LLC and the Company dated March 9, 2004, pursuant to which the Company has agreed to issue a warrant to Think Equity Partners LLC to purchase shares of Common Stock equal to 3% of the number of shares of Common Stock sold pursuant to the Purchase Agreement at the Closing, and extend one time demand registration rights, unlimited piggyback registration rights within the 3-year term of the warrant and "cashless" exercise rights, subject to customary conditions and limitations.

The Amended and Restated Registration Agreement dated September 30, 2003 among the Company and the other parties thereto (the "Dolphin Registration Rights Agreement"), to be superseded by the Second Amended Registration Rights Agreement in connection with the closing of the Conversion Agreement.

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## INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (the "Agreement") is made and entered into as of this 14th day of June, 2004 by and among VitalStream Holdings, Inc., a Nevada corporation (the "Company"), the "Stockholders" listed on the Schedule of Stockholders attached hereto (the "Stockholders") and the Investors listed on the Schedule of Investors attached hereto (each, an "Investor"; collectively, the "Investors") in connection with the closing of the transactions described in that certain Purchase Agreement dated as of the date hereof by and among the Company, the Major Investor and certain other investors (the "Purchase Agreement"). The Stockholders, the Investors, and any permitted transferees of the Stockholders and Investors who are party (or required to be a party) to this Agreement are hereinafter referred to separately as a "Party" and collectively as the "Parties."

The Parties hereby agree as follows:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means, with respect to any person, any other person which directly or indirectly Controls, is Controlled by, or is under common Control with, such person.

"Board of Directors" means the Board of Directors of the Company.

"Common Stock" shall mean the Company's common stock, par value \$0.001 per share, and any securities into which such shares may hereinafter be reclassified.

"Control" (including the terms "controlling," "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Major Investor" means WaldenVC II, L.P.

"Major Investor's Director" has the meaning set forth in Section 2 of this Agreement.

"Major Investor Shares" shall mean the Shares and Warrant Shares and any other securities issued or issuable with respect to or in exchange for Major Investor Shares.

"Observer" has the meaning set forth in Section 3 of this Agreement.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other similar entity or organization or a governmental entity or any department, agency or political subdivision thereof.

"Preferred Stock" means the Series A Preferred Stock and the Series B Preferred Stock.

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"Regulation" means all constitutions, statutes, laws, treaties, codes, ordinances, regulations, rules, orders, judgments, writs, injunctions, acts,

determinations, directions or decrees of any governmental entity with jurisdiction over the respective Party or any stock exchange or market on which any securities of the Company are listed.

"Series A Preferred Stock" shall mean the Company's 2003 Series A Preferred Stock, par value \$0.001 per share, and any securities into which such shares may hereinafter be reclassified.

"Series B Preferred Stock" shall mean the Company's 2003 Series B Preferred Stock, par value \$0.001 per share, and any securities into which such shares may hereinafter be reclassified.

"Shares" means the shares of Common Stock issued to the Major Investor pursuant to the Purchase Agreement.

"Transfer" means a sale, assignment, transfer, pledge, encumbrance or other disposition.

"Voting Shares" shall mean shares of Common Stock, shares of Series A Preferred Stock, shares of Series B Preferred Stock, any other equity securities issued by the Company with rights to vote with respect to the election of directors and any securities into which any of the foregoing may hereinafter be reclassified (each to the extent issued and outstanding).

"Warrants" means the warrants to purchase shares of Common Stock issued to the Major Investor pursuant to the Purchase Agreement.

"Warrant Shares" means the shares of Common Stock issuable upon the exercise of the Warrants.

## 2. Board of Directors.

(a) Election Rights. At any time following June 30, 2004 and from time to time until the date that the Major Investor Shares constitute no more than five (5) percent of the Company's outstanding Common Stock (on a fully diluted basis assuming exercise or conversion of all options, warrants, conversion rights and other rights exercisable for or convertible into Common Stock), each Party shall vote all of its Voting Shares now or hereafter owned by such Party or over which such Party has voting control, and shall take all other necessary actions within its control (whether in its capacity as a stockholder, director, member of the Board of Directors or any committee thereof, officer of the Company or otherwise (except to the extent such actions, upon advice of counsel, would be a breach of, contrary to or otherwise in conflict with any applicable Regulation or fiduciary duty imposed thereby)), and including, without limitation (except to the extent such actions, upon advice of counsel, would be a breach of, contrary to or otherwise in conflict with any applicable Regulation or fiduciary duty imposed thereby), attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings, and the Company shall take all necessary or desirable actions within its control, including without limitation calling special Board of Directors and stockholder meetings, so that:

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(i) one individual (who initially will be Phil Sanderson) designated by the Major Investor (the "Major Investor's Director") shall be nominated for election and elected to the Board of Directors;

(ii) to the extent permitted under applicable Regulation, the removal from the Board of Directors (with or without cause) of the Major Investor's Director shall be at the written request of the Major Investor but only upon such written request and under no other circumstances; and

(iii) in the event that the Major Investor's Director ceases to serve as a member of the Board of Directors during his term of office (whether by death, resignation or removal), the resulting vacancy on the Board

of Directors shall be filled by an individual designated by the Major Investor.

(b) Expenses and Board Compensation. The Company shall pay the reasonable out-of-pocket expenses incurred by the Major Investor's Director and the Observer in connection with attending the meetings of the Board of Directors and other travel requested by the Company associated with the Major Investor's investment in the Company to the extent the Company receives reasonable documentation evidencing the amount and purposes of such expenditures. In addition, the Company shall pay the reasonable out-of-pocket expenses, up to an aggregate of \$8,000 per annum, incurred by the Major Investor's Director, the Observer and Persons designated by either of them in connection with travel reasonably associated with the business of the Company to the extent the Company receives reasonable documentation of the amount and purposes of such expenditures. The Company also agrees to provide compensation to the Major Investor's Director and each other director of the Company affiliated with any stockholders that beneficially own more than 5% of the outstanding Common Stock of the Company that shall be not less than the compensation (if any) provided to any other director of the Company affiliated with greater than 5% stockholders of the Company.

(c) Failure to Designate Major Investor's Director. If the Major Investor fails to designate an individual to fill the Major Investor's Directorship pursuant to the terms of this Section 2, the individual previously holding such directorship shall be elected to such position, or if such individual fails or declines to serve, the election of an individual to such directorship shall be accomplished in accordance with the Company's Bylaws and applicable Regulation; provided that each Party shall vote all Voting Shares now or hereafter owned by such Party or over which such Party has voting control to remove such individual at that time when the Major Investor desires to designate an individual to fill the Major Investor's Directorship.

(d) Failure to Vote.

(i) With Respect to a Scheduled Meeting. In the event that any Party shall fail to vote all shares of Voting Shares now or hereafter owned by such Party or over which such Party has voting control at a duly noticed meeting of shareholders of the Company with respect to which the election or removal of directors is included in the notice of meeting so as to achieve any election or removal of a Major Investor's Director, as set forth in this Section 2, such Party shall be deemed immediately upon the existence of such breach to have granted to the Chairman of the Board of Directors (or, if no Chairman of the Board of Directors has been

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elected, the Chief Executive Officer of the Company), a proxy to all shares of Voting Shares now or hereafter owned by such Party or over which such Party has voting control to solely ensure (and only to the extent required to ensure) that all such shares or other securities will be voted as prescribed in this Section 2, of this Agreement. Each Party acknowledges that each proxy granted hereby, including any successive proxy, is coupled with an interest and is given to secure the performance of a duty and shall be irrevocable until the duty is performed.

(ii) With Respect to Consent or Other Meeting. In the event that any Party shall fail to vote all shares of Voting Shares now or hereafter owned by such Party or over which such Party has voting control with respect to a written consent or at any meeting of shareholders other than a duly noticed meeting of shareholders of the Company with respect to which the election or removal of directors is included in the notice of meeting so as to achieve any election or removal of a Major Investor's Director, as set forth in this Section 2, such Party shall be deemed (if such breach is not cured within five business days of such Party's receipt of notice of such breach) to have granted to the Chairman of the Board of Directors (or, if no Chairman of the Board of Directors has been elected, the Chief Executive Officer of the Company), a proxy to all shares of Voting Shares now or hereafter owned by such Party or over which such



Party has voting control to solely ensure (and only to the extent required to ensure) that all such shares or other securities will be voted as prescribed in this Section 2, of this Agreement. Each Party acknowledges that each proxy granted hereby, including any successive proxy, is coupled with an interest and is given to secure the performance of a duty and shall be irrevocable until the duty is performed.

3. Board of Director Observation Rights. At any time until the date that the Major Investor Shares constitute no more than five (5) percent of the Company's outstanding Common Stock (on a fully diluted basis assuming exercise or conversion of all options, warrants, conversion rights and other rights exercisable for or convertible into Common Stock), the Company shall give the Major Investor written notice of each meeting of the Board of Directors, at the same time and in the same manner as notice is given to the directors of the Board of Directors, and the Company shall permit one representative selected by the Major Investor (the "Observer") to attend, as an observer, all such meetings. The Observer shall be entitled to receive all written materials and other information (including, without limitation, copies of meeting minutes) given to directors of the Board of Directors in connection with such meetings at the same time such materials and information are given to such directors. The Company shall provide a copy of any proposed action by written consent in lieu of a meeting of directors of the Company to the Observer prior to the effective date upon delivery to the members of the Board of Directors of such consent describing in reasonable detail the nature and substance of such action. In connection with the attendance of any meeting, or the receipt of any materials and other information by the Observer, to the extent required by Regulation FD promulgated under the Securities Act of 1933, as amended, or any other applicable securities law or Regulation that would, absent such confidentiality agreement, require public disclosure of the information learned by the Observer at such meeting or through the receipt of such information or materials, the Observer shall sign a confidentiality agreement in form and substance reasonably satisfactory to the Observer and the Company. Notwithstanding anything in this Section 3 to the contrary, at any time the Major Investor's Director is serving on the Board of Directors, any notice, consent, explanation, written material or other information delivered to the Major Investor's Director shall be deemed to have been delivered to the Observer.

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4. Legend. Each instrument evidencing the Voting Shares held by a Person who is a signatory to this Agreement, and each instrument issued in exchange for or upon the Transfer of any Voting Shares held by a Person who is a signatory to this Agreement shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE SUBJECT TO AN INVESTOR RIGHTS AGREEMENT, DATED AS OF JUNE 14, 2004, AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY"), THE STOCKHOLDERS OF THE COMPANY, AND THE MAJOR INVESTOR REFERRED TO THEREIN, AS AMENDED, RESTATED AND MODIFIED FROM TIME TO TIME. A COPY OF SUCH INVESTOR RIGHTS AGREEMENT SHALL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

5. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company, the Major Investor and the holders of a majority of the votes of Voting Shares (excluding any Major Investor Shares) held by the Investors, and the holders of a majority of the votes of the Voting Shares held by the Stockholders.

(b) Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by

e-mail or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one business day after delivery to such carrier. All notices shall be addressed to the Party to be notified at the address as follows, or at such other address as such Party may designate by ten days' advance written notice to the other Parties:

If to the Company or the Major Investor:

to the addresses set forth on the signature pages hereto.

If to the Stockholders:

to the addresses set forth on the Schedule of Stockholders attached hereto.

(c) Assignments and Transfers by Parties. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and

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assigns. Except as provided in the following sentence, a Party may not Transfer, in whole or in part, its Voting Shares unless such Party complies with all Regulations applicable thereto, such party provides written notice of the assignment to the Company promptly after such assignment is effected and the assignee executes a counterpart to this Agreement assuming all rights and obligations of a Party hereunder. Notwithstanding the foregoing, any Party may Transfer its Voting Shares (but not its rights hereunder) to a Person that is not an Affiliate of the Transferring Party pursuant to Rule 144 promulgated under the Securities Act of 1933, as amended, or in an offering registered under the Securities Act of 1933, as amended, without complying with the requirements set forth in the preceding sentence.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Major Investor and the holders of a majority of the votes of Voting Shares (excluding any Major Investor Shares) held by the Stockholders, provided, however, that the Company may assign its rights and delegate its duties hereunder to any surviving or successor corporation in connection with a merger or consolidation of the Company with another corporation, or a sale, transfer or other disposition of all or substantially all of the Company's assets or Voting Shares to another Person without the prior written consent of the Major Investor and the holders of a majority of the votes of Voting Shares held by the Stockholders, after notice duly given by the Company to each Party; provided that such Person or successor corporation assumes the Company's obligations under this Agreement.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this

Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable Regulation, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable Regulation, the parties hereby waive any provision of Regulation which renders any provisions hereof prohibited or unenforceable in any respect.

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(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter; provided, however, this Agreement shall not supersede, terminate, amend or affect the Amended and Restated Investor Rights Agreement dated September 30, 2003 among the Company and the parties thereto.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts of the State of California for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

[signature page follows]

E-7

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company:

VITALSTREAM HOLDINGS, INC.

By: /s/ Paul Summers

-----  
Name: Paul Summers

Title: President

VitalStream Holdings, Inc.

One Jenner, Suite 100  
Irvine, California 92618  
Attention: Chief Operating Officer  
Fax: (949) 453-8686

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

The Stockholders:

Epoch Hosting, Inc.

By: /s/ R. Gregory Breetz

-----  
Name: R. Gregory Breetz  
Title: CFO

DOLPHIN COMMUNICATIONS FUND II, L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

-----  
Name: Dennis O'Connell  
Title:

DOLPHIN COMMUNICATIONS PARALLEL  
FUND II (NETHERLANDS), L.P.

By: Dolphin Communications II, L.P.,  
Its General Partner

By: Dolphin Communications, L.L.C.,  
Its General Partner

By: /s/ Dennis O'Connell

-----  
Name: Dennis O'Connell  
Title:

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Stockholders (cont.)

/s/ Paul Summers

-----  
Paul Summers, an individual

/s/ Philip N. Kaplan

-----  
Philip N. Kaplan, an individual

/s/ David R. Williams

-----  
David R. Williams, an individual

/s/ Steve Smith

-----  
Steve Smith, an individual

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor:

WALDENVC II, L.P.

By: WaldenVC LLC,  
Its General Partner

By: /s/ Phil Sanderson  
-----

Name: Phil Sanderson  
Title: General Partner

Address:

750 Battery Street, Suite 700  
San Francisco, CA 94111  
Attention: Phil Sanderson  
Telephone: (415) 391-7225  
Fax: (415) 391-7262

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor:

ThinkEquity Investment Partners IV LLC

By: ThinkEquity Holdings, LLC, Manager

By: /s/ Robert Schooler  
-----

Name: Robert Schooler  
Title: CFO

Address for Notice:

475 Sansome Street, Suite 800  
San Francisco, CA 94111  
Telephone: 415-249-2900  
Facsimile: 415-249-0975  
Email: bschooler@thinkequity.com

with a copy to:

Att: Peter Bailey  
ThinkEquity Partners LLC  
475 Sansome Street, Suite 800  
San Francisco, CA 94111  
Telephone: 415-249-1351  
Facsimile: 415-249-0975  
Email: pbailey@thinkequity.com

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor:

Newlight Associates II, L.P.

By: /s/ Robert M. Brill  
-----

Name: Robert M. Brill  
Title: General Partner

Address for Notice:

Newlight Associates II, LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412

Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor: Newlight Associates II, (BVI), L.P.

By: /s/ Robert M. Brill

-----  
Name: Robert M. Brill  
Title: General Partner

Address for Notice: Newlight Associates II, (BVI), LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412  
Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor: Newlight Associates II-E, L.P.

By: /s/ Robert M. Brill

-----  
Name: Robert M. Brill  
Title: General Partner

Address for Notice: Newlight Associates II-E, LP  
500 North Broadway  
Suite 144  
Jericho, NY 11753  
Telephone: 516-433-0090  
Facsimile: 516-433-0412  
Email: mcmorrow@nlventures.com

with a copy to:

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[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor: NanoCap Fund, LP

By: /s/ P. Bart Stephens  
-----

Name: P. Bart Stephens  
Title: Managing Partner

Address for Notice:

Stephens Investment Management  
One Sansome St. Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 835-3819  
Facsimile: (415) 835-3827  
Email: bart@stephensim.com

with a copy to:

Dan Nero  
Hedgeworks, LLC  
1900 Wright Place, Suite 100  
Carlsbad, CA 92008  
Attn: SIM file  
Telephone: 760-804-7695  
Facsimile: 760-804-9304  
Email: dtnero@hedgeworks.com

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor: Nanocap Qualified Fund, LP

By: /s/ P. Bart Stephens  
-----

Name: P. Bart Stephens  
Title: Managing Partner

Address for Notice:

Stephens Investment Management  
One Sansome St. Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 835-3819  
Facsimile: (415) 835-3827  
Email: bart@stephensim.com

with a copy to:

Dan Nero  
Hedgeworks, LLC  
1900 Wright Place, Suite 100  
Carlsbad, CA 92008  
Attn: SIM file  
Telephone: 760-804-7695  
Facsimile: 760-804-9304  
Email: dtnero@hedgeworks.com

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor: RS Orphan Fund, LP.

By: /s/ Paul H. Stephens  
-----

Name: Paul H. Stephens  
Title: Investment Advisory General  
Partner

Address for Notice:

c/o RS Investments  
389 Market Street, Suite 1700  
San Francisco, CA 94111  
Telephone: (415) 591-2700  
Facsimile: (415) 591-2852  
Email: mwilliamson@rsinvestments.com  
pstephens@rsinvestments.com

with a copy to:

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[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

Investor:

Michael F. Linos

By: /s/ Michael F. Linos  
-----

Address:  
41 Parkcrest  
Irvine, CA 92620  
Attn: Michael F. Linos  
Telephone: 714-368-1392  
Facsimile: 714-368-1394

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

The Investor:

Mark Z. Belzowski

/s/ Mark Belzowski  
-----

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

The Investors:

Arturo Sida

/s/ Arturo Sida  
-----

Address:  
26625 Honey Creek Rd.  
Rancho Palos Verdes, CA 90275  
Attention:  
Telephone: (310) 541-7609  
Fax:

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]



The Investors:

David R. Williams

/s/ David R. Williams  
-----

Address:  
363 Newport Glen Court  
Newport Beach, CA 92660  
Attention:  
Telephone:  
Fax:

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

SCHEDULE OF STOCKHOLDERS

<TABLE>  
<CAPTION>

NAME AND ADDRESS -----	NUMBER OF SHARES OF COMMON STOCK AND 2003 SERIES A PREFERRED STOCK PRIOR TO CONVERSION -----
<S>	<C>
(1) Epoch Hosting, Inc. c/o Dolphin Equity Partners 750 Lexington Avenue 16th Floor New York, NY 10022 Attention: Mr. Richard J. Brekka Facsimile: (212) 446-1638	3,848,760 Common  No Preferred
(2) Dolphin Communications Fund II, L.P. Dolphin Communications Parallel Fund II (Netherlands), L.P. 750 Lexington Avenue 16th Floor New York, NY 10022 Attention: Mr. Richard J. Brekka Facsimile: (212) 446-1638	95,889 Common 9,650 Common  495 Preferred 55 Preferred
(3) Paul Summers (held in trust) 5 Running Brook Drive Coto de Caza CA 92679 Telephone: (949) 459-8561	3,804,444 Common No Preferred
(4) Philip N. Kaplan 7 Cavaillon Newport Coast, CA 92657 Telephone: (949) 706-9436	3,804,444 Common 50 Preferred
(5) David R. Williams 363 Newport Glen Court Newport Beach, CA 92660 Telephone: (949) 646-3168	568,944 Common No Preferred
(6) Steve Smith 1103 N. Lowell Street Santa Ana, CA 92703 Telephone: (949) 678-0292	534,786 Common 25 Preferred

</TABLE>

SCHEDULE OF INVESTORS

<TABLE>  
<CAPTION>

NAME AND ADDRESS	NUMBER OF SHARES OF COMMON STOCK
<S>	<C>
(1) WaldenVC II, L.P. 750 Battery Street, Suite 700 San Francisco, CA 94111 Attention: Phil Sanderson Telephone: (415) 391-7225 Facsimile: (415) 391-7262	9,782,821
(2) Dolphin Communications Fund II, L.P. Dolphin Communications Parallel Fund II (Netherlands), L.P. 750 Lexington Avenue 16th Floor New York, NY 10022 Attention: Mr. Richard J. Brekka Facsimile: (212) 446-1638	3,078,165 345,823
(3) ThinkEquity Investment Partners IV LLC 475 Sansome Street, Suite 800 San Francisco, CA 94111 Telephone: (415) 249-2900 Facsimile: (415) 249-0975	751,647
(4) NewLight Associates II, L.P. NewLight Associates II, (BVI), L.P. NewLight Associates II-E, L.P. 500 North Broadway, Suite 144 Jericho, NY 11753 Telephone: (516) 433-0090 Facsimile: (516) 433-0412	1,078,393 378,595 173,482
(5) NanoCap Fund LP Nanocap Qualified Fund LP c/o Stephens Investment Management One Sansome St., Suite 2900 San Francisco, CA 94104 Telephone: (415) 835-3819 Facsimile: (415) 835-3827	472,836 342,399

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<TABLE>  
<CAPTION>

NAME AND ADDRESS	NUMBER OF SHARES OF COMMON STOCK
<S>	<C>
(6) RS Orphan Fund, LP. c/o RS Investments 388 Market Street, Suite 1700 San Francisco, CA 91111 Telephone: (415) 591-2700 Facsimile: (415) 591-2852	815,236
(7) Michael Linos 41 Parkcrest Irvine, CA 92620 Telephone: (714) 368-1392	329,355

Facsimile: (714) 368-1394

(8)	Mark Belzowski 27 Abeto Irvine, CA 92620 Telephone: (714) 573-1250	195,656
(9)	Arturo Sida 26625 Honey Creek Rd. Rancho Palos Verdes, CA 90275 Telephone: (310) 541-7609	40,762
(10)	David Williams 363 Newport Glen Court Newport Beach, CA 92660 Telephone: (949) 646-3168	150,003

</TABLE>