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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

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United States of America

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 MAXWELL TECHNOLOGIES, INC.,

21 Defendant.
22

Case No.

11CR0329 JM**DEFERRED PROSECUTION AGREEMENT**

23 The United States Department of Justice, Criminal Division,
24 Fraud Section and the United States Attorney's Office for the
25 Southern District of California (collectively, the "Department")
26 and defendant Maxwell Technologies, Inc. ("Maxwell"), by its
27 undersigned representatives and attorneys, pursuant to authority
28 granted by Maxwell's Board of Directors, enter into this deferred

Def.'s Initials kr

1 prosecution agreement (the "Agreement"). The terms and conditions
2 of this Agreement are as follows:

3 **Criminal Information and Acceptance of Responsibility**

4 1. Maxwell acknowledges and agrees that the Department will
5 file a two-count Criminal Information in the United States District
6 Court for the Southern District of California charging Maxwell with
7 violating: (i) the anti-bribery provisions of the Foreign Corrupt
8 Practices Act ("FCPA"), Title 15, United States Code, Section
9 78dd-1 (Count One); and (ii) the FCPA's books-and-records
10 provisions, Title 15, United States Code, Section 78m (Count Two).
11 In so doing, Maxwell knowingly waives: (a) its right to indictment
12 on these charges, as well as all rights to a speedy trial pursuant
13 to the Sixth Amendment to the United States Constitution, Title 18,
14 United States Code, Section 3161, and Federal Rule of Criminal
15 Procedure 48(b); and (b) any objection with respect to venue.
16 Maxwell consents to the filing of the Information, as provided
17 under the terms of this Agreement, in the United States District
18 Court for the Southern District of California.

19 2. Maxwell admits, accepts, and acknowledges that it is
20 responsible for the acts of its officers, employees, subsidiaries,
21 and agents as charged in the Information and the Statement of
22 Facts, attached hereto as Exhibit A, which is incorporated by
23 reference into this Agreement, and that the allegations described
24 in the Information and the facts described in Attachment A are true
25 and accurate. Should the Department pursue the prosecution that
26 is deferred by this Agreement, Maxwell agrees that it will neither
27 contest the admissibility of nor contradict the facts as stated in
28

1 the Information and the Statement of Facts in any such proceeding,
2 including any guilty plea or sentencing proceeding.

3 **Term of the Agreement**

4 3. This Agreement is effective for a period beginning on the
5 date on which the Information is filed and ending three (3) years
6 and seven (7) calendar days from that date (the "Term"). However,
7 Maxwell agrees that, in the event that the Department determines,
8 in its sole discretion, that Maxwell has knowingly violated any
9 provision of this Agreement, an extension or extensions of the term
10 of the Agreement may be imposed by the Department, in its sole
11 discretion, for up to a total additional time period of one (1)
12 year, without prejudice to the Department's right to proceed as
13 provided in Paragraphs 15-18 below. Any extension of the Agreement
14 extends all terms of this Agreement, including the terms of
15 Maxwell's self-reporting requirements under Paragraphs 10-12, for
16 an equivalent period. Conversely, in the event the Department
17 finds, in its sole discretion, that there exists a change in
18 circumstances sufficient to eliminate the need for Maxwell's
19 continued self-reporting as described in Paragraphs 10-12, and that
20 the other provisions of this Agreement have been satisfied, the
21 Term of the Agreement may, in the Department's sole discretion, be
22 terminated early.

23 **Relevant Considerations**

24 4. The Department enters into this Agreement based on the
25 individual facts and circumstances presented by this case and
26 Maxwell. Among the facts considered were: (a) Maxwell voluntarily
27 disclosed its FCPA violations to both the Department of Justice and
28 the Securities and Exchange Commission; (b) Maxwell cooperated with

1 the Department's investigation of Maxwell and others; (c) Maxwell
2 undertook remedial measures, including the implementation of an
3 enhanced compliance program, and agreed to undertake further
4 remedial measures as contemplated by this Agreement; (d) Maxwell
5 agreed to continue to cooperate with the Department in any ongoing
6 investigation of the conduct of Maxwell and its employees, agents,
7 consultants, contractors, subcontractors, subsidiaries, and others
8 relating to violations of the FCPA; and (e) the impact on Maxwell,
9 including collateral consequences, of a guilty plea or criminal
10 conviction.

11 5. Maxwell shall continue to cooperate fully with the
12 Department in any and all matters relating to corrupt payments and
13 related false books and records and internal controls. At the
14 Department's request, Maxwell shall also cooperate fully with the
15 Department and other domestic or foreign law enforcement
16 authorities and agencies, as well as with the Multilateral
17 Development Banks ("MDBs"), in any investigation of Maxwell, or any
18 of its present and former officers, directors, employees, agents,
19 consultants, contractors, subcontractors, and subsidiaries, or any
20 other party, in any and all matters relating to corrupt payments,
21 related false books and records, and inadequate internal controls.
22 Maxwell agrees that its cooperation shall include, but is not
23 limited to, the following:

24 a. Maxwell shall truthfully disclose all factual
25 information not protected by a valid claim of attorney-client
26 privilege or work-product doctrine with respect to its activities
27 and those of its present and former directors, officers, employees,
28 agents, consultants, contractors, subcontractors, and subsidiaries

1 concerning all matters relating to corrupt payments and related
2 false books and records and inadequate internal controls, about
3 which Maxwell has any knowledge or about which the Department may
4 inquire. This obligation of truthful disclosure includes the
5 obligation of Maxwell to provide to the Department, upon request,
6 any document, record or other tangible evidence relating to such
7 corrupt payments, false books and records, or inadequate internal
8 controls about which the Department may inquire of Maxwell.

9 b. Upon request of the Department, with respect to any
10 issue relevant to its investigation of corrupt payments in
11 connection with Maxwell's operations, related false books and
12 records, and inadequate internal controls, Maxwell shall designate
13 knowledgeable employees, agents or attorneys to provide to the
14 Department the information and materials described in Paragraph
15 5(a) above, on Maxwell's behalf. It is further understood that
16 Maxwell must at all times provide complete, truthful, and accurate
17 information.

18 c. With respect to any issue relevant to the
19 Department's investigation of corrupt payments, related false books
20 and records, and inadequate internal controls in connection with
21 Maxwell's operations, or any of its present or former subsidiaries
22 or affiliates, Maxwell shall use its best efforts to make available
23 for interviews or testimony, as requested by the Department,
24 present or former officers, directors, employees, agents and
25 consultants of Maxwell, as well as the officers, directors,
26 employees, agents and consultants of contractors and
27 subcontractors. This obligation includes, but is not limited to,
28 sworn testimony before a federal grand jury or in federal trials,

1 as well as interviews with federal law enforcement and regulatory
 2 authorities. Cooperation under this Paragraph shall include
 3 identification of witnesses who, to Maxwell's knowledge, may have
 4 material information regarding the matters under investigation.

5 d. With respect to any information, testimony,
 6 documents, records or other tangible evidence provided to the
 7 Department pursuant to this Agreement, Maxwell consents to any and
 8 all disclosures to other governmental authorities, including United
 9 States authorities and those of a foreign government, and the MDBs,
 10 of such materials as the Department, in its sole discretion, shall
 11 deem appropriate.

12 Payment of Monetary Penalty

13 6. The Department and Maxwell agree that the applicable
 14 monetary penalty shall be calculated pursuant to the United States
 15 Sentencing Guidelines ("USSG" or "Sentencing Guidelines").
 16 Application of the USSG to determine the applicable fine range
 17 yields the following analysis:

18 a. The 2010 USSG Manual is applicable to this matter.

19 b. Base Offense Level. Based upon USSG §§ 2C1.1 and
 20 2B1.1, the total offense level is 32, calculated as follows:

21 Base offense level (§ 2C1.1(a)(2)):	12
22 Benefit Received of \$2.5-\$7M	
23 (§§ 2C1.1(b)(2), 2B1.1(b)(1)(J)):	+18
24 Involved more than one bribe (§ 2C1.1(b)(1))	+ 2
25 Total Offense Level:	32

26 c. Base Fine. Based upon USSG § 8C2.4(a)(2), the base
 27 fine is \$17,500,000.

d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 3, calculated as follows:

Base score (§ 8C2.5(a)):	5
High-level personnel (§ 8C2.5(b)(3)(A)(i))	+3
Voluntary Disclosure, Cooperation,	
Acceptance (§ 8C2.5(g)(1))	<u>-5</u>
Total Culpability Score:	3

e. Calculation of Fine Range. Based upon USSG §8C2.7, the total fine range is \$10,500,000 to \$21,000,000, calculated as follows:

Base Fine (§ 8C2.4(d)):	\$17,500,000
Multipliers (§ 8C2.6):	[0.60 - 1.20]
Total Fine Range (§ 8C2.7):	\$10,500,000 - \$21,000,000

f. Agreed Criminal Penalty. The Department and Maxwell agree that the appropriate criminal penalty in this case is \$8,000,000, or approximately 25 percent below the bottom of the applicable Sentencing Guidelines range of \$10,500,000, in recognition of, among other considerations, Maxwell's voluntary disclosure of the illegal conduct, its full cooperation with the investigations of the Department and the Securities and Exchange Commission, and its commitments in this Agreement.

7. Payment Schedule. Maxwell will make three (3) fixed payments, the first due ten (10) business days after execution of this agreement. The second payment will be due twelve (12) months after the first payment. The third and final payment will be due twenty-four (24) months after the first payment.

Initial Payment	\$3,500,000
Second Payment	\$2,250,000

1 Third Payment \$2,250,000

2 8. The \$8,000,000 penalty is final and shall not be
3 refunded. Furthermore, nothing in this Agreement shall be deemed
4 an agreement by the Department that \$8,000,000 is the maximum
5 penalty that may be imposed in any future prosecution, and the
6 Department is not precluded from arguing in any future prosecution
7 that the Court should impose a higher fine, although the Department
8 agrees that under those circumstances, it will recommend to the
9 Court that any amount paid under this Agreement should be offset
10 against any fine the Court imposes as part of a future judgment.
11 Maxwell acknowledges that no tax deduction may be sought in
12 connection with the payment of any part of this \$8,000,000 penalty.

13 **Conditional Release from Criminal Liability**

14 9. In return for Maxwell's full and truthful cooperation,
15 and its compliance with the terms and conditions of this Agreement,
16 the Department agrees, subject to paragraphs 15 through 18, below,
17 not to use any information related to the conduct described in the
18 Statement of Facts, attached hereto as Exhibit A, against Maxwell
19 or any of its wholly owned or controlled subsidiaries in any
20 criminal or civil case, except: (a) in a prosecution for perjury
21 or obstruction of justice; (b) in a prosecution for making a false
22 statement; (c) in a prosecution or other proceeding relating to any
23 crime of violence; or (d) in a prosecution or other proceeding
24 relating to a violation of any provision of Title 26 of the United
25 States Code. In addition, the Department agrees, except as
26 provided herein, that it will not bring any criminal case against
27 Maxwell or any of its wholly-owned or controlled subsidiaries
28 related to the conduct of present and former officers, directors,

1 employees, agents, consultants, contractors and subcontractors, as
2 described in the Statement of Facts, attached hereto as Exhibit A.

3 a. This Paragraph does not provide any protection
4 against prosecution for any corrupt payments, false books and
5 records, or inadequate internal controls, if any, that occur in the
6 future by Maxwell, or by any of its officers, directors, employees,
7 agents, consultants, contractors, subcontractors, and subsidiaries,
8 irrespective of whether disclosed by Maxwell.

9 b. In addition, this Paragraph does not provide any
10 protection against prosecution of any present or former officer,
11 director, employee, shareholder, agent, consultant, contractor, or
12 subcontractor of Maxwell for any violations committed by them.

13 **Corporate Compliance Program and Reporting Requirements**

14 10. Maxwell represents that it has implemented and will
15 continue to implement a compliance and ethics program designed to
16 prevent and detect violations of the FCPA and other applicable
17 anti-corruption laws throughout its operations, including those of
18 its subsidiaries, affiliates, agents, and joint ventures, and those
19 of its contractors and subcontractors with responsibilities that
20 include interacting with foreign officials or other high risk
21 activities. Implementation of these policies and procedures shall
22 not be construed in any future enforcement proceeding as providing
23 immunity or amnesty for any crimes not disclosed to the Department
24 as of the date of signing of this Agreement for which Maxwell would
25 otherwise be responsible.

26 11. In order to address any deficiencies in its internal
27 controls, policies, and procedures, Maxwell represents that it has
28 undertaken, and will continue to undertake in the future, in a

1 manner consistent with all of its obligations under this Agreement,
2 a review of its existing internal controls, policies, and
3 procedures regarding compliance with the FCPA and other applicable
4 anti-corruption laws. If necessary and appropriate, Maxwell will
5 adopt new or modify existing internal controls, policies, and
6 procedures in order to ensure that Maxwell maintains: (a) a system
7 of internal accounting controls designed to ensure the making and
8 keeping of fair and accurate books, records, and accounts; and (b)
9 a rigorous anti-corruption compliance code, standards, and
10 procedures designed to detect and deter violations of the FCPA and
11 other applicable anti-corruption laws. The internal controls
12 system and compliance code, standards, and procedures will include,
13 but not be limited to, the minimum elements set forth in Attachment
14 C, which is incorporated by reference into this Agreement.

15 12. Maxwell agrees that it will report to the Department
16 periodically, at no less than 12-month intervals during a
17 three-year term, regarding remediation and implementation of the
18 compliance program and internal controls, policies, and procedures
19 described in Attachment C. Should Maxwell discover credible
20 evidence that questionable or corrupt payments or questionable or
21 corrupt transfers of property or interests may have been offered,
22 promised, paid, or authorized by any Maxwell entity or person, or
23 any entity or person working directly for Maxwell (including its
24 subsidiaries, affiliates, and any agent), or that related false
25 books and records have been maintained, Maxwell shall promptly
26 report such conduct to the Department. During this three-year
27 period, Maxwell shall: (1) conduct an initial review and submit an
28

1 initial report, and (2) conduct and prepare at least two (2)
2 follow-up reviews and reports, as described below:

3 a. By no later than one (1) year from the date this
4 Agreement is executed, Maxwell shall submit to the Department a
5 written report setting forth a complete description of its
6 remediation efforts to date, its proposals reasonably designed to
7 improve Maxwell's internal controls, policies, and procedures for
8 ensuring compliance with the FCPA and other applicable anti-
9 corruption laws, and the proposed scope of the subsequent reviews.
10 The report shall be transmitted to Deputy Chief - FCPA Unit, Fraud
11 Section, Criminal Division, U.S. Department of Justice, 1400 New
12 York Avenue, NW, Bond Building, Fourth Floor, Washington, DC
13 20530. Maxwell may extend the time period for issuance of the
14 report with prior written approval of the Department.

15 b. Maxwell shall undertake at least two (2) follow-up
16 reviews, incorporating the Department's views on Maxwell's prior
17 reviews and reports, to further monitor and assess whether
18 Maxwell's policies and procedures are reasonably designed to detect
19 and prevent violations of the FCPA and other applicable anti-
20 corruption laws.

21 c. The first follow-up review and report shall be
22 completed by no later than one (1) year after the initial review.
23 The second follow-up review and reports shall be completed by no
24 later than one (1) year after the completion of the preceding
25 follow-up review.

26 d. Maxwell may extend the time period for submission
27 of any of the follow-up reports with prior written approval of the
28 Department.

1 **Deferred Prosecution**

2 13. In consideration of: (a) Maxwell's past and future
3 cooperation described in Paragraph 5 above; (b) Maxwell's payment
4 of a monetary criminal penalty of \$8,000,000; and (c) Maxwell's
5 voluntary disclosure of its illegal conduct and implementation and
6 maintenance of remedial measures, including the enhanced compliance
7 code and self-monitoring as described in Paragraphs 10 through 12
8 above, the Department agrees that any prosecution of Maxwell for
9 the conduct set forth in the Statement of Facts be and hereby is
10 deferred for the Term of this Agreement.

11 14. The Department further agrees that if Maxwell fully
12 complies with all of its obligations under this Agreement, the
13 Department will not continue the criminal prosecution against
14 Maxwell described in Paragraph 1 and, at the conclusion of the
15 Term, this Agreement shall expire. Within thirty (30) days of the
16 Agreement's expiration, the Department shall seek dismissal with
17 prejudice of the Criminal Information filed against Maxwell
18 described in Paragraph 1.

19 **Breach of the Agreement**

20 15. If, during the Term of this Agreement, the Department
21 determines, in its sole discretion, that Maxwell has (a) committed
22 any felony under federal law subsequent to the signing of this
23 Agreement, (b) at any time provided deliberately false, incomplete,
24 or misleading information, or (c) otherwise breached the Agreement,
25 Maxwell shall thereafter be subject to prosecution for any federal
26 criminal violation of which the Department has knowledge, and the
27 information and the facts described in the Statement of Facts,
28 attached hereto as Exhibit A, may be pursued by the Department in

1 the U.S. District Court for the Southern District of California or
2 any other venue appropriate under law. Any such prosecution may
3 be premised on information provided by Maxwell. Any such
4 prosecution that is not time-barred by the applicable statute of
5 limitations on the date of the signing of this Agreement may be
6 commenced against Maxwell notwithstanding the expiration of the
7 statute of limitations between the signing of this Agreement and
8 the expiration of the Term plus one (1) year. Thus, by signing
9 this Agreement, Maxwell agrees that the statute of limitations with
10 respect to any prosecution that is not time-barred on the date of
11 the signing of this Agreement shall be tolled for the Term plus one
12 (1) year.

13 16. In the event that the Department determines that Maxwell
14 has breached this Agreement, the Department agrees to provide
15 Maxwell with written notice of such breach prior to instituting any
16 prosecution resulting from such breach. Maxwell shall, within
17 thirty (30) days of receipt of such notice, have the opportunity
18 to respond to the Department in writing to explain the nature and
19 circumstances of such breach, as well as the actions Maxwell has
20 taken to address and remediate the situation, which explanation the
21 Department shall consider in determining whether to institute a
22 prosecution.

23 17. In the event that the Department determines that Maxwell
24 has breached this Agreement: (a) all statements made by or on
25 behalf of Maxwell to the Department or to the Court, including the
26 Statement of Facts attached hereto as Exhibit A, and any testimony
27 given by Maxwell before a grand jury, a court, or any tribunal, or
28 at any legislative hearings, whether prior or subsequent to this

1 Agreement, or any leads derived from such statements or testimony,
2 shall be admissible in evidence in any and all criminal proceedings
3 brought by the Department against Maxwell; and (b) Maxwell shall
4 not assert any claim under the United States Constitution, Rule
5 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the
6 Federal Rules of Evidence, or any other federal rule, that
7 statements made by or on behalf of Maxwell prior or subsequent to
8 this Agreement, and any leads derived therefrom, should be
9 suppressed. The decision whether conduct or statements of any
10 individual will be imputed to Maxwell for the purpose of
11 determining whether Maxwell has violated any provision of this
12 Agreement shall be in the sole discretion of the Department.

13 18. Maxwell acknowledges that the Department has made no
14 representations, assurances, or promises concerning what sentence
15 may be imposed by the Court if Maxwell breaches this Agreement and
16 this matter proceeds to judgment. Maxwell further acknowledges
17 that any such sentence is solely within the discretion of the Court
18 and that nothing in this Agreement binds or restricts the Court in
19 the exercise of such discretion.

20 **Sale or Merger of Maxwell**

21 19. Maxwell agrees that in the event it sells, merges, or
22 transfers all or substantially all of its business operations as
23 they exist as of the date of this Agreement, whether such sale is
24 structured as a stock or asset sale, merger or transfer, it shall
25 include in any contract for sale, merger, or transfer a provision
26 binding the purchaser, or any successor in interest thereto, to the
27 obligations described in this Agreement.

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Public Statements by Maxwell

20. Maxwell expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for Maxwell make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by Maxwell set forth above or the facts described in the attached Statement of Facts, attached hereto as Exhibit A. Any such contradictory statement shall, subject to cure rights of Maxwell described below, constitute a breach of this Agreement and Maxwell thereafter shall be subject to prosecution as set forth in Paragraphs 15-18 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to Maxwell for the purpose of determining whether Maxwell has breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify Maxwell, and Maxwell may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. Consistent with the obligations of Maxwell as set forth above, Maxwell shall be permitted to raise defenses and to assert affirmative claims in civil and regulatory proceedings relating to the matters set forth in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former employee of Maxwell in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on Maxwell's behalf.

1 21. Maxwell agrees that if it or any of its direct or
2 indirect affiliates or subsidiaries issues a press release in
3 connection with this Agreement, Maxwell shall first consult the
4 Department to determine whether (a) the text of the release or
5 proposed statements at the press conference are true and accurate
6 with respect to matters between the Department and Maxwell; and (b)
7 the Department has no objection to the release.

8 22. The Department agrees to bring to the attention of
9 governmental and other debarment authorities the facts and
10 circumstances relating to the nature of the conduct underlying this
11 Agreement, including the nature and quality of Maxwell's
12 cooperation and remediation. By agreeing to provide this
13 information to debarment authorities, the Department is not
14 agreeing to advocate on Maxwell's behalf, but rather is providing
15 facts to be evaluated independently by the debarment authorities.

16 **Limitations on Binding Effect of Agreement**

17 23. This Agreement is binding on Maxwell and the Department
18 but specifically does not bind any other federal agencies, or any
19 state, local or foreign law enforcement or regulatory agencies, or
20 any other authorities, although the Department will bring Maxwell's
21 cooperation and compliance with its other obligations under this
22 Agreement to the attention of such agencies and authorities if
23 requested to do so by Maxwell.

24 **Notice**

25 24. Any notice to the Department under this Agreement shall
26 be given by personal delivery, overnight delivery by a recognized
27 delivery service, or registered or certified mail, addressed to the
28 Deputy Chief - FCPA Unit, Fraud Section, Criminal Division, U.S.

1 Department of Justice, Fourth Floor, 1400 New York Avenue, N.W.,
2 Washington, DC 20530, and for Maxwell addressed to Kevin Royal (or
3 his successor), Chief Financial Officer, Maxwell Technologies, 5271
4 Viewridge Court, Suite 100, San Diego, CA 92123, and Jeffrey
5 Higgins, Esq., Gunderson Dettmer, 11682 El Camino Real, Suite 100
6 San Diego, CA 92130. Notice shall be effective upon actual
7 receipt by the Department or Maxwell.

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Complete Agreement

25. This Agreement sets forth all the terms of the agreement between Maxwell and the Department. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Department, the attorneys for Maxwell, and a duly authorized representative of Maxwell.

Dated: January 27, 2011.

AGREED:

FOR MAXWELL TECHNOLOGIES, INC.:

Date: January 25, 2011 By: _____

KEVIN ROYAL
Chief Financial Officer

Date: January 25, 2011 By: _____

JEFFREY HIGGINS
Gunderson Dettmer Stough
Villeneuve Franklin & Hachigian, LLP

FOR THE DEPARTMENT OF JUSTICE:

DENIS J. MCINERNEY
Chief, Fraud Section

Date: Jan 27, 2011

By: _____

STEPHEN J. SPIEGELHALTER
Trial Attorney, Fraud Section

United States Department of Justice
Criminal Division, Fraud Section
1400 New York Ave., N.W.
Washington, D.C. 20005
(202) 307-1423

SPECIAL ASST. U.S. ATTORNEY
SOUTHERN DIST. OF CALIFORNIA

LAURA E. DUFFY
United States Attorney

Date: Jan 27, 2011

By: _____

ERIC J. BESTE
Assistant United States Attorney

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Maxwell Technologies, Inc. ("Maxwell"). I understand the terms of this Agreement and voluntarily agree, on behalf of Maxwell, to each of its terms. Before signing this Agreement, I consulted outside counsel for Maxwell. Counsel fully advised me of Maxwell's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with Maxwell's Board of Directors. I have been advised and caused Maxwell's outside counsel to advise the Board of Directors fully of Maxwell's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on Maxwell's behalf, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Chief Financial Officer for Maxwell Technologies, Inc.

Date: January 25, 2011

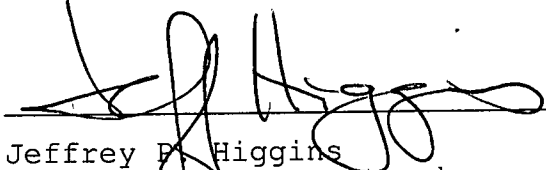
By: _____

Kevin S. Royal
Chief Financial Officer
Maxwell Technologies, Inc.

CERTIFICATE OF COUNSEL

I am counsel for Maxwell Technologies, Inc. ("Maxwell") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Maxwell documents and have discussed the terms of this Agreement with the Maxwell Board of Directors. Based on our review of the foregoing materials and discussions, I am of the opinion that: the representative of Maxwell has been duly authorized to enter into this Agreement on Maxwell's behalf and that this Agreement has been duly and validly authorized, executed, and delivered on Maxwell's behalf and is a valid and binding obligation of Maxwell. Further, I have carefully reviewed the terms of this Agreement with the Board of Directors, Maxwell's Chief Financial Officer, Kevin Royal, and Maxwell's Attorney and Patent Engineer. I have fully advised them of Maxwell's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, Maxwell's decision to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: January 25, 2011

By: 

Jeffrey P. Higgins
Gunderson Dettmer Stough
Villeneuve Franklin & Hachigian, LLP

ATTACHMENT A**STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement ("the Agreement") between the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Southern District of California (collectively, the "Department") and Maxwell Technologies, Inc. ("Maxwell"), and the parties hereby agree and stipulate that the following information is true and accurate. As set forth in

Paragraph 2 of the Agreement, Maxwell admits, accepts, and acknowledges that it is responsible for the acts of its officers, employees, and agents as set forth below.

RELEVANT ENTITIES AND INDIVIDUALS***The Defendant***

1. MAXWELL TECHNOLOGIES, INC. ("MAXWELL"), a manufacturer of energy storage and power delivery products, was incorporated in Delaware, headquartered in San Diego, California, and had manufacturing capabilities in the United States, Switzerland, and China. MAXWELL's shares were registered with the Securities and Exchange Commission ("SEC") pursuant to Section 12(b) of the Securities Exchange Act of 1934. MAXWELL's shares traded on the NASDAQ under the symbol "MXWL."

2. As an issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, Title 15, United States Code, Section 781, MAXWELL was required to file periodic reports with the SEC under Section 13 of the Securities Exchange Act, Title 15 United States Code, Section 78m.

1 Accordingly, MAXWELL was an "issuer" within the meaning of the
2 FCPA, Title 15, United States Code, Section 78dd-1.

3 **Other Relevant Maxwell Entities and Individuals**

4 3. MAXWELL TECHNOLOGIES S.A. ("MAXWELL S.A."), previously
5 known as Montena Components Ltd., was a wholly owned subsidiary of
6 MAXWELL that manufactured and sold high-voltage capacitors in
7 several countries, including China. MAXWELL S.A. was incorporated
8 and headquartered in Switzerland. MAXWELL S.A.'s financial results
9 were consolidated with MAXWELL's throughout the relevant period.
10 MAXWELL S.A., although separately incorporated, shared employees,
11 officers, and personnel, and, where specified, undertook the acts
12 set forth herein with the authorization, knowledge and subject to
13 the control of MAXWELL.

14 4. "Executive A," a citizen of the United States, was a
15 senior executive at MAXWELL in its San Diego office during portions
16 of the relevant period and, after resignation, continued to draw
17 a salary from MAXWELL for services as a "corporate planner."

18 5. "Executive B," a citizen of the United States, was a
19 senior executive at MAXWELL in its San Diego office for portions
20 of the relevant period. After Executive B's resignation,
21 "Executive B" continued to work part-time for MAXWELL for the
22 remainder of the relevant period pursuant to a Transition
23 Agreement.

24 6. "Executive C," a citizen of the United States, was a
25 senior executive at MAXWELL in the finance department in San Diego
26 during portions of the relevant period.

27 7. "Executive D," a citizen of the United States, was
28 MAXWELL's "Operations Controller, Europe" during portions of the

1 relevant period and later became MAXWELL's Controller. Although
2 Executive D at times worked in Switzerland, at all times relevant,
3 Executive D was a MAXWELL employee.

4 8. "Executive E," a citizen of Switzerland, was MAXWELL
5 S.A.'s Vice President and General Manager for portions of the
6 relevant period. Executive E later became MAXWELL S.A.'s Senior
7 Vice President and General Manager.

8 9. "Agent 1," a Chinese national, was a third-party agent
9 responsible for MAXWELL S.A.'s high-voltage capacitor sales to
10 Chinese customers from at least 2002 until May 2009.

11 ***Maxwell's Customers***

12 10. Pinggao Group Co. Ltd. (formerly Pingdingshan High
13 Voltage Switchgear Works) ("Pinggao Group") was a state-owned
14 manufacturer of electric-utility infrastructure in Henan Province,
15 People's Republic of China ("PRC" or "China").

16 11. New Northeast Electric Shenyang HV Switchgear Co., Ltd.
17 ("Shenyang HV") was a state-owned manufacturer of electric-utility
18 infrastructure in Liaoning Province, PRC.

19 12. Xi-an XD High Voltage Apparatus Co., Ltd. a/k/a Xi'an
20 Shinky High Voltage Electric Co., Ltd. ("Xi-an XD") was a state-
21 owned manufacturer of electric-utility infrastructure in Shaanxi
22 Province, PRC.

23 **THE BRIBERY SCHEME**

24 ***Generally***

25 13. From at least July 2002 through in or about May 2009,
26 MAXWELL and its subsidiaries paid approximately \$2,789,131 to Agent
27 1 to be distributed to Chinese foreign officials, in return for
28 securing contracts that profited MAXWELL.

14. MAXWELL and its subsidiaries accomplished these payments by using Agent 1 to market and sell MAXWELL's high voltage capacitors to Chinese consumers of MAXWELL'S capacitors, substantially all of which were Chinese state-owned entities. During the relevant period, Agent 1 requested quotes from MAXWELL S.A. on behalf of prospective Chinese state-owned entities. Upon Agent 1's instruction, MAXWELL S.A. added an "extra" 20 percent to the quoted amounts to arrive at a higher price for MAXWELL S.A.'s high-voltage equipment. MAXWELL S.A. then invoiced the Chinese state-owned entities for equipment at the higher-priced rate, which the state-owned entities paid upon receipt of the equipment. Agent 1 invoiced MAXWELL S.A. for the "extra" 20 percent added to quoted prices, which Agent 1 classified in Agent 1's invoices as either "extra amount" or "special arrangement" fees. Upon receipt, Agent 1 distributed the "extra amounts" to officials at the Chinese state-owned entities, including employees at including Pinggao Group, Shenyang HV, and Xi-an XD.

Knowledge Within MAXWELL'S U.S. Management

15. MAXWELL's management within the United States discovered, tacitly approved, concealed and caused to be concealed the bribery scheme outlined above. For instance:

A. In October 2002, MAXWELL sent Executive D to assist with the integration of the finance function as a result of MAXWELL's acquisition of MAXWELL S.A.

B. On November 20, 2002, Executive D sent an email to MAXWELL's most senior officers, then located in the Southern District of California and elsewhere, reporting that Executive D discovered that "there is a payment that is made

1 to a Chinese bank account in relation to selling . . .
2 equipment." Executive D concluded that "[i]t would appear
3 that this payment is a kick-back, pay-off, bribe, whatever
4 you want to call it, given that we cannot obtain an invoice
5 or other document that identifies what the payment is for.
6 This type of payment is in violation of US trade laws."
7 Executive D then asked Executive A, Executive B, and
8 Executive C for advice on how "we should handle this
9 situation."

10 C. Executive B, then MAXWELL'S Chief Operating
11 Officer, replied that "this is a well know [sic] issue" and
12 that Executive B would dispatch another MAXWELL employee who
13 had "familiarity with the issues and solutions" to assist
14 Executive D. Executive B also instructed that there be "[n]o
15 more emails please."

16 16. Following the payments' discovery by MAXWELL's senior
17 management in the United States, under Executive E's oversight and
18 direct supervision, payments to Agent 1, which Agent 1 then passed
19 on to officials at Chinese state-owned entities, only increased.
20 In 2002, MAXWELL S.A. paid approximately USD\$165,000 to Agent 1.
21 In 2008, MAXWELL S.A. paid nearly USD\$1.1 million to Agent 1.

22 ***Accounting for "Extra Amounts" and "Special Arrangement" Fees***

23 17. For all relevant periods, MAXWELL periodically filed and
24 caused to be filed with the SEC financial statements and reports
25 disclosing, among other things, MAXWELL's financial data and an
26 analysis of MAXWELL's financial condition and results of
27 operations. MAXWELL's statements and reports accounted for
28 payments of "extra amounts" and "special arrangement" fees paid as

1 bribes to officials at state-owned entities as sales-commission
2 expenses in MAXWELL's books, records, and accounts. In its Form
3 10-Q filing for the quarter ended March 31, 2009, MAXWELL
4 reclassified the amounts and fees for current and prior periods as
5 a reduction in revenue.

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ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, Maxwell Technologies, Inc. ("Maxwell" or the "Company") has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the "Department") regarding certain improper payments to foreign officials to facilitate the award of contracts and assist in obtaining business for the Company and the recording of such payments on the Company's books and records; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Department; and

WHEREAS, the Company's outside counsel, Jeffrey Higgins and Jerome Roth, have advised the Board of Directors of the Company of its rights, possible defenses, the Sentencing Guidelines' provisions, and the consequences of entering into such agreement with the Department;

Therefore, the Board of Directors has RESOLVED that:

1. The Company (a) consents to the filing of a two-count Information charging Maxwell with violations of the anti-bribery and books-and-records provisions of the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Sections 78dd-1 and 78m, respectively; (b) waives indictment on such charges and enters into a deferred prosecution agreement with the Department; and (c) agrees to accept a monetary criminal penalty against Maxwell of \$8,000,000, and to pay \$8,000,000 to the United States Treasury with respect to the conduct described in the Information;

1 2. The Chief Financial Officer, Kevin Royal, is hereby
2 authorized, empowered and directed, on behalf of the Company, to
3 execute the Deferred Prosecution Agreement substantially in such
4 form as reviewed by this Board of Directors at this meeting with
5 such changes as the Chief Financial Officer, Mr. Royal, may
6 approve;

7 3. Maxwell's Chief Financial Officer, Mr. Royal, is hereby
8 authorized, empowered, and directed to take any and all actions as
9 may be necessary or appropriate and to approve the forms, terms,
10 or provisions of any agreement or other documents as may be
11 necessary or appropriate, to carry out and effectuate the purpose
12 and intent of the foregoing resolutions; and

13 4. All of the actions of Maxwell's Chief Financial Officer,
14 Mr. Royal, which actions would have been authorized by the
15 foregoing resolutions except that such actions were taken prior to
16 the adoption of such resolutions, are hereby severally ratified,
17 confirmed, approved, and adopted as actions on behalf of the
18 Company.

19 Date: January 25, 2011

22 By: _____

24 Corporate Secretary
25 Maxwell Technologies, Inc.

ATTACHMENT CCORPORATE COMPLIANCE PROGRAM

In order to address deficiencies in its internal controls, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Section 78dd-1, et seq., and other applicable anti-corruption laws, Maxwell Technologies, Inc. and its subsidiaries (collectively, "Maxwell") agree to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, Maxwell agrees to adopt new or to modify existing internal controls, policies, and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that Maxwell makes and keeps fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but not be limited to, the following elements to the extent that they are not already part of Maxwell's existing internal controls, policies and procedures:

1. Maxwell will develop and promulgate a clearly articulated and visible corporate policy against violations of the FCPA, including its anti-bribery, books and records, and internal controls provisions, and other applicable counterparts (collectively, the "anti-corruption laws"), which policy shall be memorialized in a written compliance code.

1 2. Maxwell will ensure that its senior management provides
2 strong, explicit, and visible support and commitment to its
3 corporate policy against violations of the anti-corruption laws and
4 its compliance code.

5 3. Maxwell will develop and promulgate compliance standards
6 and procedures designed to reduce the prospect of violations of the
7 anti-corruption laws and Maxwell's compliance code and will take
8 appropriate measures to encourage and support the observance of
9 ethics and compliance standards and procedures against foreign
10 bribery at all levels of Maxwell. These standards and procedures
11 shall apply to all directors, officers, and employees and, where
12 necessary and appropriate, outside parties acting on Maxwell's
13 behalf in a foreign jurisdiction, including but not limited to,
14 agents and intermediaries, consultants, representatives,
15 distributors, teaming partners, contractors and suppliers,
16 consortia, and joint venture partners (collectively, "agents and
17 business partners"), and shall notify all employees that compliance
18 with the standards and procedures is the duty of individuals at all
19 levels of Maxwell. Such standards and procedures shall include
20 policies governing:

- 21 a. Gifts;
- 22 b. Hospitality, entertainment, and expenses;
- 23 c. Customer travel;
- 24 d. Political contributions;
- 25 e. Charitable donations and sponsorships;
- 26 f. Facilitation payments; and
- 27 g. Solicitation and extortion.

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1 4. Maxwell will develop these compliance standards and
2 procedures, including internal controls, ethics, and compliance
3 programs on the basis of a risk assessment addressing the
4 individual circumstances of the company, in particular the foreign
5 bribery risks facing the company, including, but not limited to,
6 its geographical organization, interactions with various types and
7 levels of government officials, industrial sector of operation,
8 involvement in joint-venture arrangements, importance of licenses
9 and permits in the company's operations, degree of governmental
10 oversight and inspection, and volume and importance of goods and
11 personnel clearing through customs and immigration.

12 5. Maxwell shall review its compliance standards and
13 procedures, including internal controls, ethics, and compliance
14 programs, no less than annually, and updated as appropriate, taking
15 into account relevant developments in the field and evolving
16 international and industry standards, and update and adapt as
17 necessary to ensure the continued effectiveness of the company's
18 internal controls, ethics, and compliance programs.

19 6. Maxwell will assign responsibility to one or more senior
20 corporate executives of Maxwell for the implementation and
21 oversight of compliance with policies, standards, and procedures
22 regarding the anti-corruption laws. Such corporate official(s)
23 shall have direct reporting obligations to independent monitoring
24 bodies, including internal audit, Maxwell's Board of Directors, or
25 any appropriate committee of the Board of Directors, and shall have
26 an adequate level of autonomy from management as well as sufficient
27 resources and authority to maintain such autonomy.

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1 7. Maxwell will ensure that it has a system of financial
2 and accounting procedures, including a system of internal controls,
3 reasonably designed to ensure the maintenance of fair and accurate
4 books, records, and accounts to ensure that they cannot be used for
5 the purpose of foreign bribery or concealing such bribery.

6 8. Maxwell will implement mechanisms designed to ensure
7 that the policies, standards, and procedures of Maxwell regarding
8 the anti-corruption laws are effectively communicated to all
9 directors, officers, employees, and, where appropriate, agents and
10 business partners. These mechanisms shall include: (a) periodic
11 training for all directors, officers, and employees, and, where
12 necessary and appropriate, agents and business partners; and (b)
13 annual certifications by all such directors, officers, and
14 employees, and, where necessary and appropriate, agents, and
15 business partners, certifying compliance with the training
16 requirements.

17 9. Maxwell will maintain, or where necessary establish, an
18 effective system for:

19 a. Providing guidance and advice to directors,
20 officers, employees, and, where appropriate, agents and business
21 partners, on complying with Maxwell's compliance policies,
22 standards, and procedures, including when they need advice on an
23 urgent basis on in any foreign jurisdiction in which the company
24 operates;

25 b. Internal and, where possible, confidential
26 reporting by, and protection of, directors, officers, employees,
27 and, where appropriate, agents and business partners, not willing
28 to violate professional standards or ethics under instructions or

1 pressure from hierarchical superiors, as well as for directors,
2 officers, employee, and, where appropriate, agents and business
3 partners, willing to report breaches of the law or professional
4 standards or ethics concerning anti-corruption occurring within the
5 company, suspected criminal conduct, and/or violations of the
6 compliance policies, standards, and procedures regarding the
7 anti-corruption laws for directors, officers, employees, and, where
8 necessary and appropriate, agents and business partners; and

9 c. Responding to such requests and undertaking
10 appropriate action in response to such reports.

11 10. Maxwell will institute appropriate disciplinary
12 procedures to address, among other things, violations of the
13 anti-corruption laws and Maxwell's compliance and ethics program
14 by Maxwell's directors, officers, and employees. Maxwell shall
15 implement procedures to ensure that where misconduct is discovered,
16 reasonable steps are taken to remedy the harm resulting from such
17 misconduct, and to ensure that appropriate steps are taken to
18 prevent further similar misconduct, including assessing the
19 internal controls, ethics, and compliance program and making
20 modifications necessary to ensure the program is effective.

21 11. Maxwell will institute appropriate due diligence and
22 compliance requirements pertaining to the retention and oversight
23 of all agents and business partners, including:

24 a. Properly documented risk-based due diligence
25 pertaining to the hiring and appropriate and regular oversight of
26 agents and business partners;

27 b. Informing agents and business partners of Maxwell's
28 commitment to abiding by laws on the prohibitions against foreign

1 bribery, and of Maxwell's ethics and compliance standards and
2 procedures or other measures for preventing and detecting such
3 bribery; and

4 c. Seeking a reciprocal commitment from agents and
5 business partners.

6 12. Where necessary and appropriate, Maxwell will include
7 standard provisions in agreements, contracts, and renewals thereof
8 with all agents and business partners that are reasonably
9 calculated to prevent violations of the anti-corruption laws, which
10 may, depending upon the circumstances, include: (a)
11 anti-corruption representations and undertakings relating to
12 compliance with the anti-corruption laws; (b) rights to conduct
13 audits of the books and records of the agent or business partner
14 to ensure compliance with the foregoing; and (c) rights to
15 terminate an agent or business partner as a result of any breach
16 of anti-corruption laws, and regulations or representations and
17 undertakings related to such matters.

18 13. Maxwell will conduct periodic review and testing of the
19 compliance code, standards, and procedures designed to evaluate and
20 improve their effectiveness in preventing and detecting violations
21 of anti-corruption laws and Maxwell's compliance and ethics
22 programs, taking into account relevant developments in the field
23 and evolving international and industry standards.