

09-19-2000



101462310

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

8 28 00

**Conveyance Type**

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger  
Effective Date  
Month Day Year
- Change of Name
- Other

**Conveying Party**

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

**Receiving Party**

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership
- Corporation  Association
- Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

09/18/2000 MTHAI1  
01 FC:481

00000471 1060291

FOR OFFICE USE ONLY

40.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account  
(Enter for payment by deposit account or if additional fees can be charged to the account.)  
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

*John S. Wietorek*

*[Handwritten Signature]*

*8/18/02*

Name of Person Signing

Signature

Date Signed

BD Draft 06/16/00

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "Agreement") dated as of June 16, 2000, is by and between Open Solutions Inc. (the "Buyer"), a Delaware corporation; and Global Payment Systems LLC ("GPS"), a Georgia limited liability company (the "Seller").

The Seller operates, among other things, a Business (as defined herein) pursuant to agreements between Seller and certain of Seller's customers. The Seller desires to sell and transfer certain assets and liabilities associated with the Business to the Buyer and the Buyer desires to purchase certain assets and to assume certain liabilities associated with the Business, all in accordance with the terms and conditions hereinafter provided.

1. **Definitions:** Certain terms used in this Agreement are defined as follows:

"Affiliate" means, with respect to the person specified, that person's directors, officers, and employees and each person who controls or is controlled by, or is under common control with, the person specified. Fifty-one (51%) percent or greater ownership will be required in order to constitute "control" for the purposes of this definition.

"Agreement" means this Asset Purchase Agreement, including all schedules and exhibits hereto, and, if amended, modified or supplemented, as the same may be so amended, modified or supplemented from time to time.

"Business" means the use of the Seller's "Bank-on-it" software product, and the Domestic Modifications as defined herein, to provide on line banking services to banks physically present and doing business in the United States.

"Closing Date" means June 16, 2000.

"Customer Agreements" are the Seller's agreements with its Customers identified in Schedule I.

"Domestic Modifications" means the software modifications developed by Seller in and for use in the United States and developed and owned by Seller in accordance with the Agreement between Global Payment Systems LLC and DTEK Corporation dated December 16, 1998, which was subsequently assigned by DTEK Corporation to Consolidated Data, Incorporated effective March 10, 1999 (the "License Agreement"). The Domestic Modifications are labeled "NDC Final" and are further identified in Schedule I.

- 2 -

**"Equipment"** will mean the equipment identified in Schedule I.

**"Fixed Assets"** will mean the fixed assets identified in Schedule I.

**"Intellectual Property"** means (i) copyrights, patents, trademarks, logos, service marks, trade names, service names, assumed names, all applications therefor and all registrations thereof, if any, relevant to the "Bank-on-it" software product and listed in Schedule I, (ii) copyrights and patents only which are relevant to the Domestic Modifications and listed in Schedule I, and (iii) technology rights, computer software, trade secrets, know how, inventions, processes, and formulae associated with the "Bank-on-it" software product and the Domestic Modifications.

**"Liabilities"** means the obligations of the Seller arising on and after the Closing Date to perform the services and support obligations under the Customer Agreements, the Vendor Agreements, and to perform the support obligations associated with Seller's Strategic Alliance Agreement with Wynwood Servicing and Technology LLC, a copy of which is attached hereto as Exhibit B.

**"person"** means any natural person, entity, or association, including any corporation, partnership, limited liability company, government (or agency or subdivision thereof), trust, joint venture, or proprietorship.

**"Purchased Assets"** has the meaning set forth in Section 2(a).

**"Purchase Price"** has the meaning set forth in Section 2(b).

**"Sublease"** has the meaning set forth in Section 2(d).

**"Sublicense"** has the meaning set forth in 2(c).

**"Transition Date"** has the meaning set forth in Section 9(a)(i).

**"Transition Period"** means the period from the Closing Date until the Transition Date.

**"Transition Services"** has the meaning set forth in Section 9(a)(ii).

**"Transition Services Fees"** has the meaning set forth in Section 9(a)(iv).

**"Treasury Services"** means the provision of cash management services, including balance and transaction reporting, lockbox reporting, controlled disbursement reporting, cash transfers, and ACH and wire transfers, but excluding credit card processing and Electronic Data Interchange services, to banks physically present and doing business in the United States.

- 3 -

"Vendor Agreements" means the agreements listed on Schedule I hereto, under which the Seller obtains certain goods and services related to the Business.

## 2. Purchase and Sale of Assets and Grant of Sublicense.

(a) **Purchased Assets.** The Seller hereby sells, assigns, transfers, and delivers to the Buyer, and the Buyer hereby purchases and accepts from the Seller, all of the Seller's right, title, and interest in and to all of the assets described in the attached Schedule I (collectively, the "Purchased Assets"). The Purchased Assets, further described in Schedule I, include the following:

(i) all rights and interests of the Seller under the Customer Agreements accruing on and after the Closing Date, and all pertinent books and records relating to such Customer Agreements;

(ii) all rights and interests of the Seller accruing on and after the Closing Date under the Vendor Agreements and all pertinent books and records relating to such Vendor Agreements;

(iii) the Equipment;

(iv) the Intellectual Property; and

(v) The revenue associated with the performance of the support obligations in connection with Exhibit B and Seller's Contract Express customer agreements.

(b) **Purchase Price.** In consideration of the sale, transfer, conveyance and assignment of the Purchased Assets and as partial consideration for the performance by Seller of the Transition Services, the Buyer will, on the Closing Date (i) pay to Seller the sum of Six Hundred Thirty Five Thousand Dollars (\$635,000) by wire transfer of immediately available funds to an account designated by Seller, (ii) pay to Seller the sum of Thirty Nine Thousand Dollars (\$39,000) in partial payment of the Transition Services Fees, also by wire transfer of immediately available funds to an account designated by the Seller, and (iii) issue to Seller [21,460] shares of the Buyer's Series F Preferred Stock (the "Buyer Shares"). If the Buyer effects an initial public offering of shares of its common stock registered in an effective registration statement under the Securities Act of 1933, as amended, and the price per share at which shares of the Buyer's common stock are initially offered to the public in such offering, as shown on the cover of the Buyer's final prospectus in connection with such offering (the "IPO Price"), is less than \$18.64, then either (i) the conversion ratio at which shares of the Buyer's Series F Preferred Stock are converted into

- 4 -

shares of common stock in connection with such offering will be adjusted such that upon such conversion, each holder of a Buyer Share receives in respect thereof shares of common stock having an aggregate value (at the IPO Price) of not less than \$18.64, or (ii) within ten days following the closing of such offering, the Buyer will issue to each holder of a Buyer Share, as a purchase price adjustment and without additional consideration, enough additional shares of common stock such that the combined value (at the IPO Price) of the shares of common stock received upon conversion of such Buyer Share plus such additional shares is equal to not less than \$18.64.

The [Buyer] will be responsible for any sales, use, transfer, or similar taxes imposed by any taxing authority in connection with the sale and transfer of the Purchased Assets.

(c) **Sublicense.** Upon execution and delivery of this Agreement, Seller and Buyer will execute and deliver the Sublicense in the form attached hereto as Exhibit A.

(d) **Sublease.** Upon execution and delivery of this Agreement, Seller and Buyer will execute and deliver the Sublease in the form attached hereto as Exhibit C.

### 3. Assumption of Liabilities.

(a) **Assumption.** The Buyer hereby assumes and agrees to perform or otherwise discharge, when and as due, the Liabilities. The Buyer will hold the Seller harmless with respect to the Liabilities. Except as specifically provided in this Agreement, the Buyer is not assuming any liabilities, obligations, or commitments of the Seller.

(b) **Right to Contest Liability.** Nothing in this Agreement will require the Buyer to perform or otherwise discharge any of the Liabilities so long as the Buyer in good faith disputes the validity or amount thereof, *provided, however*, that the Buyer will indemnify the Seller for any Loss and Expense (as defined below) incurred by the Seller as a result thereof.

(c) **Consents.** The Seller shall use its commercially reasonable efforts to obtain as promptly as practicable any consents required in connection with the sale, transfer and assignment to the Buyer of the Purchased Assets and the transfer to and assumption by the Buyer of the Liabilities. If any required consent is not obtained by the date of the Closing, the Seller shall nevertheless continue to pursue such consents and at the request of the Buyer the Seller shall cooperate with the Buyer in any reasonable arrangement designed to provide to the Buyer the benefits under or of any such asset or property. Nothing contained

- 5 -

in this Agreement shall be deemed to constitute an assignment or attempted assignment by the Seller of any agreement or contract if any assignment or attempted assignment would constitute a breach thereof or give any third party the right to terminate any such agreement or contract.

(d) **Defenses and Claims.** Nothing in this Agreement will deprive the Buyer of any defenses, set-offs, or counterclaims that the Seller may have had or that the Buyer may now or hereafter have with respect to any of the Liabilities (collectively, "Defenses and Claims"). The Seller hereby irrevocably sells, assigns, transfers, and delivers to the Buyer all of the Defenses and Claims of the Seller and hereby agrees to cooperate with the Buyer, at Buyer's expense, to maintain, secure, perfect, and enforce such Defenses and Claims, including the signing of documents, the giving of testimony, and the taking of any such other action as is reasonably necessary and requested by the Buyer in connection with the Defenses and Claims.

(e) **No Effect on Representations, Etc.** Nothing in this Section 3 will affect the other representations, warranties, covenants, promises, and agreements made by the parties in this Agreement.

4. **Hiring.** The Buyer may extend offers of employment or consulting relationships to the following persons on such terms and conditions as the Buyer may determine, in its discretion:

|                 |               |                 |               |
|-----------------|---------------|-----------------|---------------|
| Eric Lincoln    | Chris Hansen  | Greg Cowger     | Leisa Carter  |
| Cynthia Baldwin | Scott Berger  | Cheryl Peck     | Brenda Taylor |
| Kevin Moore     | Kathy Evans   | Kevin Martin    | Claire Lowrie |
| Debbie White    | Finis Hudgins | Jacque Wakagawa |               |

#### 5. **Reciprocal Representations and Warranties.**

Each of the Buyer and the Seller hereby represents and warrants to the other as follows:

(a) **Incorporation; Authority.** It is a corporation or limited liability company duly organized, validly existing, and in good standing under the laws of its state of organization and has all requisite corporate or limited liability company power and authority to own or lease and operate its properties and to carry on its business as now conducted.

(b) **Authorization and Enforceability.** It has all requisite power and full legal right and authority (including due approval of its board of directors, managing member(s), or similar persons and its members or stockholders, as the case may be, if necessary) to enter into this Agreement, to

- 6 -

perform all of its obligations hereunder, and to consummate the transactions contemplated hereby.

This Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof, except as enforceability may be subject to the effect of any applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization, marshaling, or other similar laws or rules of law affecting creditors' rights and remedies generally, and as such enforcement may be subject to general principles of equity.

(c) **Third-Party Consents; Non-Contravention; Etc.** Except as otherwise provided herein, no consent, approval, or authorization of or registration, designation, declaration, or filing with any governmental authority, federal or other, is required on its part in connection with the execution, delivery, and performance of its obligations under this Agreement or its consummation of the transactions contemplated hereby.

Except as otherwise provided in Section 3(c) in which the parties acknowledge that certain consents may be secured after the Closing Date, its execution, delivery, and performance of its obligations under this Agreement and its consummation of the transactions contemplated hereby will not violate or result (with or without the giving of notice or the lapse of time or both) in any conflict, breach, or default, or the creation of any lien, encumbrance, or restriction on transfer, or the termination, acceleration, vesting, or modification of any right or obligation, under or in respect of any (i) provision of its charter documents, by-laws, operating agreement, and other governing documents, as the case may be, (ii) contract or other legally binding agreement, or (iii) law or other legal requirement.

**6. Additional Representations of the Buyer.** The Buyer hereby represents and warrants to the Seller as follows:

(a) **Capitalization.** Its capital stock authorized, and issued and outstanding, respectively, are as follows:

(i) **Preferred Stock.** Eight Million Nine Hundred and One Thousand Six Hundred Sixty-Five (8,901,665) shares of Preferred Stock (the "Preferred Stock"), One Million (1,000,000) shares of which have been designated Series A-1 Preferred Stock, all of which are issued and outstanding, Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three (583,333) shares of which have been designated Series A-2 Preferred Stock, all of which are issued and outstanding, One Million Seven Hundred Thirty-Six Thousand Two Hundred Fifty (1,736,250) shares of which have been designated Series B Preferred Stock, One Million Six Hundred Twenty-Seven Thousand Nine Hundred Seventeen



- 7 -

(1,627,917) of which are issued and outstanding, One Million Three Hundred Seventy-Five Thousand (1,375,000) shares of which have been designated Series C Preferred Stock, One Million Two Hundred Sixty-Three Thousand Eight Hundred Eighty-Nine (1,263,889) of which are issued and outstanding, One Million Two Hundred Fifty Thousand (1,250,000) shares of which have been designated Series D Preferred Stock, Eight Hundred Thirty-Three Thousand Thirty-Three (833,333) of which are issued and outstanding, Seven Hundred Forty-Six Thousand One Hundred Fifty-Seven (746,157) shares of which have been designated Series E Preferred Stock, Seven Hundred Forty Six Thousand One Hundred Fifty-Seven (746,157) of which are issued and outstanding, and Two Million Two Hundred and Ten Thousand Nine Hundred Twenty-Five (2,210,925) shares of which have been designated Series F Preferred Stock, of which Two Million One Hundred Forty-Five Thousand Nine Hundred Twenty-Five (2,145,925) shares are issued and outstanding.

(ii) Common Stock. Forty Million (40,000,000) shares of common stock ("Common Stock"), of which Two Million Eight Hundred Eight Nine Thousand Seven Hundred and Seven (2,889,707) shares are issued and outstanding.

(b) **Status of Shares.** All of Buyer's issued and outstanding shares of capital stock are, and the Buyer Shares, when issued, sold, and delivered by the Buyer to the Seller pursuant to this Agreement, will be, duly authorized by all requisite corporate action on the part of the Buyer, its Board of Directors, its officers, and if applicable, its shareholders, and will be validly issued, fully paid, and non-assessable, and will be free and clear of all liens, charges, restrictions, pledges, claims and encumbrances of any kind, other than restrictions arising by reason of the issuance thereof without registration under applicable securities laws.

(c) **Government Approvals.** No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for, or in connection with, the execution and delivery by Buyer of this Agreement, for the offer, issue, sale, or delivery of the Buyer Shares or for the performance by Buyer of its obligations under this Agreement.

(d) **Compliance with Other Instruments; No Breach or Default.** Buyer is in compliance with the material terms and provisions of its respective (i) Certificate of Incorporation and By-laws, each as amended to date, and (ii) mortgages, indentures, leases, agreements, contracts and other instruments by which it is bound or to which it or any of its properties or assets is subject; in each case, subject to such exceptions as both individually and in the aggregate will not cause any material adverse effect on the Buyer. Buyer is in compliance with all material terms of all judgments, decrees, governmental orders, laws,

- 8 -

statutes, rules or regulations by which it is bound or to which it or any of its properties or assets is subject; in each case, subject to such exceptions as both individually and in the aggregate will not cause any material adverse effect on the Buyer. The execution, delivery and performance of and compliance with this Agreement and the issuance of the Buyer Shares, have not constituted or resulted in, or will not constitute or result in, a default or violation or give the other party thereto the right to terminate, change or renegotiate any material term or provision of any of the foregoing Certificate of Incorporation, Bylaws, mortgages, indentures, leases, documents, instruments, judgments, agreements, contracts, decrees, orders, laws, statutes, rules and regulations or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of the Buyer.

(e) **Disclosure.** Buyer has previously delivered to Seller a business plan dated as of January 31, 2000 (the "Business Plan"), a copy of which is attached hereto as Exhibit D. The Business Plan does not contain any untrue statement of present or historical fact with respect to the Buyer and its operations or omit to state any present or historical fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. Excluding forecasts and projections identified as made by third parties, as to which this representation is not made, the forecasts and projections of future financial results contained in the Business Plan were prepared by the Company in good faith based upon assumptions that the Company believed, as of the date of the Business Plan, and still does believe, as of the date hereof, to be reasonable (it being acknowledged by the Seller that such forecasts and projections may not be achieved, including because such assumptions may prove incorrect and/or because of changes in the facts and circumstance upon which such forecasts, projections, and assumptions are based). No statement by Buyer contained in this Agreement and the exhibits and schedules attached hereto, or in any certificate furnished or to be furnished to Seller pursuant hereto, when taken as a whole, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

(f) **Rule 144 Reporting Obligations.** With a view toward making available to Seller the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the Securities and Exchange Commission (the "SEC") that may at any time permit Seller to sell securities of the Buyer to the public without registration, the Buyer agrees to:

- (i) make and keep public information available (as those terms are understood and defined in Rule 144) at all times after the effective date of the first registration statement filed by Buyer for the offering of its securities to the general public so long as Buyer

. 9 -

remains subject to the periodic reporting requirements under Sections 13 or 15(d) of the Exchange Act;

- (ii) file with the SEC in a timely manner all reports and other documents required of the Buyer under the Securities Act and the Exchange Act; and
- (iii) furnish to Seller, so long as accurate and so long as Seller owns any Buyer Shares, forthwith upon request, (i) a written statement by the Buyer as to its compliance with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by Buyer), and of the Securities Act and of the Exchange Act (at any time after it has become subject to such reporting requirements), (ii) a copy of the most recent annual or quarterly report of the Buyer, and such other reports and documents so filed by the Buyer, and (iii) such other information as may be reasonably requested in availing Seller of any rule or regulation of the SEC which permits the selling of any such securities without registration.

**7. Additional Representations of the Seller.** The Seller hereby represents and warrants to the Buyer as follows:

(a) **Title to Purchased Assets.** It has and will transfer to the Buyer good and marketable title to all of the Purchased Assets; all free and clear of liens, encumbrances, and restrictions on transfer. Furthermore, the Seller represents that Schedule I sets forth a complete list of the Domestic Modifications.

(b) **Intellectual Property Rights.** None of the Intellectual Property nor the use thereof by the Seller has violated any license or agreement between the Seller and any other person or infringed any third party intellectual property or other proprietary right which derives from the laws of the United States; and (ii) the use of the Intellectual Property by the Buyer without modification or enhancement, and in a manner which is like the use thereof by the Seller and which is consistent with this Agreement and the Sublicense, as applicable, will not result in any such violation or infringement of third party intellectual property rights or other proprietary rights derived from the laws of the United States. No intellectual property license or similar permission or consent of any third party is required in connection with such use by the Buyer.

(c) **Customers and Customer Agreements.** The customer list included in Schedule I lists all of Seller's current customers (the "Customers") and the related Customer Agreements associated with the Business. To Seller's knowledge, and except as otherwise set forth in Schedule I, no Customer listed

- 10 -

on Schedule I has cancelled or terminated its Customer Agreement, nor has it threatened to cancel or terminate its Customer Agreement.

**(d) Investment Representations.**

(i) The Seller is an "accredited investor" within the meaning of SEC Rule 501(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act") and is acquiring the Buyer Shares for its own account, for investment only, and not with a view to, or for sale in connection with, any distribution of the Buyer Shares in violation of the Securities Act, any rule or regulation thereunder, or any applicable state securities laws.

(ii) The Seller has had the opportunity to ask questions of and receive answers from the officers of the Buyer and has received such information with respect to the business, financial conditions, affairs, and prospects of the Buyer as it has deemed necessary or desirable in connection with its acquisition of the Buyer Shares.

(iii) The Seller has sufficient experience in business, financial, and investment matters to be able to evaluate the relative merits and risks involved in an investment in the Buyer Shares and to make an informed decision with respect to such investment.

(iv) The Seller can afford a complete loss of its investment in the Buyer Shares and is able to bear the economic risk of holding the Buyer Shares for an indefinite period.

(v) The Seller understands and agrees that (i) the Buyer Shares have not been registered under the Securities Act or any other applicable securities laws, and are "restricted securities" within the meaning of Rule 144 under the Securities Act, (ii) the Buyer Shares cannot be sold, transferred, or otherwise disposed of unless they are subsequently registered under the Securities Act and other applicable securities laws, or unless exemptions from such registration requirements are available, and the Seller demonstrates such availability to the Buyer's reasonable satisfaction, and (iii) any certificate representing the Buyer Shares will bear a restrictive legend referring to the restrictions on transfer imposed by applicable securities laws.

**(e) Government Approvals.** No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for, or in connection with, the execution and delivery by Seller of this Agreement, or for the performance by Seller of its obligations under this Agreement.

- 11 -

(f) **Contracts.** The License Agreement and all of the contracts listed in the attached schedules of Purchased Assets and Liabilities, respectively, are in full force and effect, and neither the Seller, nor to the best of the Seller's knowledge, any other party thereto, is in default under or material breach thereof, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or material breach thereof on the part of the Seller, or to the best of the Seller's knowledge, any other party thereto. The Seller has delivered to the Buyer or otherwise will promptly deliver to the Buyer true copies of all such contracts, including all amendments, modifications, and supplements thereto. Seller represents and warrants that the Customer Agreements associated with the Bank-On-It software product and identified in Schedule I are materially the same in form and substance as the sample election form and license agreement attached hereto as Exhibit F, with the exception of cash management services agreements for River City Bank and First Midwest Bank, which agreements are Customer Agreements and have been provided to the Buyer prior to the Closing Date.

The Seller has paid all amounts payable under the License Agreement (including without limitation in respect of license and maintenance revenues), and no further amounts are or will become payable by the Seller or the Buyer thereunder.

(g) **Disclosure.** No statement by Seller contained in this Agreement and the exhibits and schedules attached hereto, or in any certificate furnished or to be furnished to Buyer pursuant hereto, when taken as a whole, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

8. **Indemnification.** Each of the Buyer and the Seller will indemnify, defend, and hold harmless the other from and against any and all damages, losses, claims, demands, actions, causes of action, suits, liabilities, costs, and expenses (including court costs and reasonable attorneys' fees) ("Loss and Expense") related to or arising out of or in connection with any breach by the indemnifying party (the "Indemnitor") of any representation, warranty, covenant, agreement, obligation, or undertaking made by it in this Agreement, except as same arises from the negligence or willful misconduct of the other party (the "Indemnitee"). In the event that both the Seller and the Buyer are jointly sued by a third party and both are deemed to be liable as joint tortfeasors, then the allocation of loss between the Buyer and the Seller will be as determined by the court. In case any claim is made, or any suit or action is commenced, against the Indemnitee, the Indemnitee will promptly give the Indemnitor notice thereof (but any failure or delay in giving such notice will relieve the Indemnitor of its indemnity obligations only to the extent that the

- 12 -

Indemnitor is prejudiced thereby) and the Indemnitor will be entitled to conduct the defense thereof with counsel reasonably acceptable to the Indemnitee or to participate in the defense thereof, at the Indemnitor's expense. If the Indemnitor elects to conduct any such defense, the Indemnitee will be entitled to participate in such defense at the Indemnitor's expense. The Indemnitor may (but need not) conduct or participate in the defense of any such claim, suit or action, but the Indemnitor will promptly notify the Indemnitee if the Indemnitor will not desire to conduct or participate in the defense of any such claim, suit or action, in which event Indemnitor will reimburse Indemnitee for Indemnitee's reasonable costs in conducting such defense. The Indemnitee may at any time notify the Indemnitor of its intention to settle or compromise any claim, suit or action against the Indemnitee in respect of which payments may be sought by the Indemnitee hereunder (and the defense of which the Indemnitor has not previously elected to conduct or participate in), and the Indemnitee may settle or compromise any such claim, suit or action unless the Indemnitor notifies the Indemnitee in writing (within ten (10) days after the receipt of written notice by Indemnitor of Indemnitee's intention to settle or compromise) that the Indemnitor reasonably objects to such settlement or compromise or intends to conduct the defense of such claim, suit or action. Otherwise, any such settlement or compromise of any final judgment or decree entered on or in any claim, suit or action that the Indemnitee has agreed to or defended or participated in the defense of in accordance herewith will be deemed to have been consented to by, and will be binding upon, the Indemnitor as fully as if the Indemnitor had assumed the defense thereof and a final judgment or decree had been entered in such suit or action, or with regard to such claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree.

Notwithstanding the foregoing, the Indemnitor will be required to indemnify and hold harmless the Indemnitee under this Section 8 with respect to the Loss and Expense only after the aggregate amount of otherwise indemnifiable Loss and Expense exceeds \$75,000 (at which point all indemnifiable Loss and Expense will be indemnified, including the first \$75,000). The indemnification obligations hereunder shall terminate as to both the Seller and the Buyer on the date which is two (2) years after the Closing Date, except for the indemnification obligations that arise out of the Buyer's assumption of the Liabilities, which obligations shall survive indefinitely, and the indemnification obligations that arise out of the Seller's representations in Section 7(b) ("Intellectual Property Rights"), which obligations shall survive for four (4) years after the Closing Date; in each case, provided, that indemnification obligations in respect of matters as to which an Indemnitee gives reasonably specific written notice to an Indemnitor prior to the applicable survival cut-off date will survive until the final resolution of such matters by agreement of the parties or final, non-appealable judgment of a court of competent jurisdiction. The maximum, aggregate amount of the Loss and

BUSDOCS:867599.2

TRADEMARK  
REEL: 002140 FRAME: 0368

- 13 -

Expense for which any party shall be liable under this Section 8 shall be \$200,000; provided, however, that there shall be no maximum liability pursuant to this sentence or otherwise with respect to the Buyer's obligation to pay the Purchase Price or to perform and discharge the Liabilities, or with respect to the Seller's indemnification obligations relating to its representations in Section 7(b) ("Intellectual Property Rights").

All representations, warranties, and covenants made by either party in this Agreement will be deemed to be material and to have been relied on by the other party, notwithstanding any investigation made by or on behalf of the other party, and will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

#### 9. Certain Covenants.

(a) **Transition Period.** (i) Orderly Transition. During the Transition Period, and at Buyer's expense, the Buyer and the Seller agree to use their commercially reasonable efforts to facilitate and to effect an orderly transition of the Purchased Assets acquired by and the Liabilities assumed by the Buyer. The Transition Period will end on the Transition Date as will be mutually determined by the parties hereto, but which Transition Date shall not be later than September 30, 2000. .

(ii) Services During the Transition Period. During the Transition Period, the Seller will to the extent requested by the Buyer, and in exchange for the Transition Services Fees identified in Section 9(a)(iv), provide Transition Services as follows:

(a) **Transition Employees.** Seller will make available to the Buyer, for purposes of providing technical assistance in furtherance of the Transition Services, two of Seller's employees, namely Finis Hudgins and Leisa Carter (the "Transition Employees"), who for a period of ninety (90) days commencing on the Closing Date, will provide technical assistance to Buyer, at the Buyer's instruction and under the Buyer's exclusive direction and control, and at the Buyer's expense, meaning the Buyer shall reimburse to Seller the amount of Seller's expenditures for the salaries and benefits of the Transition Employees during the referenced period. Buyer shall reimburse the Seller for the salaries and benefits within thirty (30) days of the date of Seller's invoice for same. Seller will provide reasonable support to the Transition Employees in furtherance of the Transition Services. The Buyer will assume any risk associated with the performance and work product of the Transition Employees. The Transition Employees will be available for travel as required by Buyer, at Buyer's expense. The Seller and the Buyer will each pay fifty (50%) percent of the bonus amount payable to each of the Transition Employees, which bonus amount equals \$25,000 for each Transition Employee and is payable to each of

- 14 -

the Transition Employees within five (5) days of the end of the ninety (90) day period referenced above. The terms of the bonus opportunity as to the Transition Employees will be set forth in the Transition Employee Agreements to be signed by the parties hereto and the Transition Employees;

(b) Operations Costs. For a period of sixty (60) days commencing on the Closing Date, and as consideration for Buyer's payment of the sum identified in Section 2(b)(ii), the Seller will support and maintain the ASP "demo" web site and the operations of the existing, related servers resident in Atlanta, Georgia on behalf of the Buyer. In the event Buyer desires to receive the ASP support for an additional thirty (30) days, it shall give notice of same to Seller fourteen (14) days prior to the end of the initial sixty (60) day period. Upon such notice, Seller will provide the ASP support for a thirty (30) day extended period, in exchange for advance payment of fifty (50%) percent of the total flat rate paid by Buyer for the initial sixty (60) day period of ASP support, which amount is \$19,500;

(c) Communications Costs. Any incidental costs or expenses associated with communications between the Customers, the Buyer and the Seller in furtherance of the Transition Services, and any de-activation fees incurred by Seller in connection with the Transition Services, will be paid by the Seller and then reimbursed to the Seller by the Buyer within thirty (30) days of the date of Seller's invoice for such costs and fees, which shall be invoiced to Buyer at cost;

(d) Software Deployment. Seller will ship the software products associated with the Purchased Assets to customers on Buyer's account, at Seller's standard pricing, for a period of ninety (90) days to commence on the Closing Date;

(e) Payments on Accounts Receivable. A list of the accounts receivable of NDC shall be attached hereto as Schedule V. In the event that either Buyer or Seller receives payment from a Customer in satisfaction of the accounts receivable of both parties, the party receiving the payment will make a copy of the check or other payment instrument, will deposit same into its operating account, and shall promptly pay to the other party its pro-rata share of the payment attributable to its respective, subject account receivable. Also, in the event that either party receives a check or other payment instrument made payable to the other party, the party receiving the check or other payment instrument will make a copy of same and promptly forward the check or other payment instrument to the party payee. The parties each agree to make its accounts receivable records, and any other records relevant to this Section 9(a)(ii)(e), available to the other party upon reasonable, advance written notice and during regular business hours, to afford the other party the opportunity to review for compliance with this Section;



- 15 -

(f) Within 15 days of the Closing date, the Seller will ship to the Buyer, at Buyer's expense, current billing records associated with the Purchased Assets; and

(g) The Seller will continue to pay various vendor invoices and other fees in connection with the continued operation of the premises which is subject to the Sublease for a period of one hundred twenty (120) days after the Closing Date, unless otherwise agreed by the parties in writing, including, but not limited to, utilities, telephone lines, T1 lines, ASP lines, and those invoices/fees associated with the Sublease, which amounts shall be billed to the Buyer, at Seller's cost, and shall be reimbursed to the Seller by the Buyer within thirty (30) days of the date of Seller's invoice for such expenses. The rental payments associated with the Sublease shall be paid by the Seller and reimbursed to the Seller by the Buyer, also pursuant to an invoice as set forth above, in accordance with the Sublease and for a minimum period of four (4) months. The Sublease, in accordance with its terms, shall terminate no later than December 31, 2000.

(iii) Unavoidable Circumstances. In no event will the Seller be liable with respect to any delay or failure in the performance of the Transition Services described under this Section 9 due to factors beyond its reasonable control and not reasonably avoidable, including, but not limited to, war or other armed conflict, conditions or events of nature, civil disturbances, terrorism, work stoppages, failure of telephone lines and equipment, computer hardware or software failures, power failures, fires, or other insolvency, neglect, act, omission or default of the Buyer or any third party.

(iv) Transition Services Fees: The Buyer shall pay the Seller a base amount of Thirty Nine Thousand Dollars (\$39,000) in partial consideration for the Transition Services identified above in Section 9(a)(ii)(b), in accordance with Section 2(b)(ii). The Buyer shall pay additional Transition Services Fees as set forth and as identified in Sections 9(a)(ii) (a), (c), (d) and (g).

(b) Confidential Information. For a period of five (5) years commencing on the Closing Date, each party (the "Receiving Party") shall treat as confidential any information relevant to the other party's business, ~~including (the "Information"), which Information has been disclosed to it by the other party (the "Disclosing Party") prior to the date of this Agreement. Furthermore, and for a period of five (5) years following the Closing Date, the Seller will maintain the confidentiality of all confidential, sensitive, or proprietary information with respect to the Purchased Assets (including the Intellectual Property), which will be the exclusive property of the Buyer.~~ Unless previously authorized in writing by the Disclosing Party, the Receiving Party will not disclose such Information to any third party, except as set forth below in the immediately following paragraph final paragraph of this Section 9(b), in furtherance of its efforts to transfer or assign any of its assets under obligations

- 16 -

of confidentiality, as reasonably required in connection with tax or regulatory matters, and except to the extent that such Information is known to the Receiving Party other than as a result of the Disclosing Party's disclosure or is already in the public domain, or subsequently enters the public domain other than as a result of the breach of the Receiving Party's obligations under this Section.

Notwithstanding the foregoing or any other provision of this Agreement, for a period of five (5) years following the Closing Date, except as provided in the following paragraph the Seller will maintain the confidentiality of all confidential, sensitive, or proprietary Information with respect to the Purchased Assets (including the Intellectual Property), which will be the exclusive property of the Buyer, and unless previously authorized in writing by the Buyer, will not use such Information for any purpose or (subject to the following paragraph) disclose any such Information to any third-party.

If a Receiving Party is required by law to disclose any such Information, the Receiving Party will provide the Disclosing Party with prompt notice of such requirement so that the Disclosing Party may seek a protective order or take other appropriate action and/or waive compliance with this Agreement to the extent of such required disclosure. In the absence of such a waiver, if the Receiving Party is, in the opinion of its counsel, compelled to disclose any such Information upon pain of liability for contempt or other censure or penalty, the Receiving Party may disclose such Information to the relevant court or other tribunal without liability hereunder, but otherwise will maintain the confidentiality of such Information.

(c) **Non-Competition.** For a period of two (2) years after the Closing Date, (which period will automatically be extended by a period equal to any period during which the Seller is in violation of this Section 9(c), the Seller will not directly or knowingly indirectly (except as set forth below) provide Treasury Services to banking institutions physically present and doing business in the United States and having consolidated assets of less than Three Billion Dollars (the "Banks"), with the following exceptions:

- (i) Seller shall have the right to continue to provide Treasury Services to all of its existing bank customers which are Banks, without restriction of whatever nature, which Banks are listed in Schedule IV. Furthermore, Seller shall have the right to provide Treasury Services in the context of new and existing relationships with Banks if such relationships arise from any third party alliance relationship of Seller which exists on or before the Closing Date;
- (ii) In the event any of the Banks listed on Schedule IV, or any of Seller's existing or future corporate or government customers,

- 17 -

merge or consolidate with, or acquire or are acquired by, another Bank (the "Future Bank"), Seller shall, without restriction, have the right to extend its provision of Treasury Services to the Future Bank;

- (iii) In the event any of Seller's existing or future corporate or government customers initiates a request that Seller provide its services in connection with a Bank not listed on Schedule IV, Seller shall be permitted to enter into the necessary arrangements with such Bank without violation of this Agreement in furtherance of the provision of services to its corporate or government customers; and
- (iv) Seller shall not in any case be precluded from providing Electronic Data Interchange services in relation to the processing of credit card transactions and/or business-to-business procurement activities.

Notwithstanding anything herein to the contrary, and for the avoidance of any doubt, in the event Seller sells, transfers, or assigns all or any part of its Treasury Services business to a non-Affiliate, the non-competition restrictions set forth herein shall not apply to or bind such non-Affiliate transferee.

(d) **Non-Solicitation of Employees.** For a period of three (3) years commencing on the Closing Date, (which period will automatically be extended by a period equal to any period during which the Seller is in violation of this Section 9(d). the Seller will not, and will not permit its personnel or Affiliates, directly or indirectly to recruit, solicit, induce, or attempt to induce any of the persons actually hired or engaged by the Buyer pursuant to the offers referred to in Section 4 hereof to terminate their employment with the Buyer, and will not assist any other person to do so. Notwithstanding the foregoing, this non-solicitation restriction shall not apply to Seller if the person actually hired or engaged by the Buyer solicits the Seller for employment without inducement by the Seller and absent any violation of this Section by the Seller.

(e) **Non-Solicitation of Customers, Suppliers, Etc.** For a period of three (3) years commencing on the Closing Date, (which period will automatically be extended by a period equal to any period during which the Seller is in violation of this Section 9(e). the Seller will not, and will not permit any of its personnel or Affiliates, to directly or knowingly indirectly divert, take away, or attempt to divert or take away, from the Buyer any of the business or patronage of any of the Customers in respect of the Business, or induce or attempt to induce any Customer to reduce the amount of business it does or proposes to do with the Buyer in respect of the Business (*provided*, that this will not preclude the Seller from selling other goods and services to such Customers).

- 18 -

(f) **Equitable Remedies.** The Seller acknowledges that any breach of its obligations under this Section 9 would cause substantial and irreparable damage to the Buyer, for which money damages would be an inadequate remedy, and accordingly, acknowledges and agrees that the Buyer will be entitled to an injunction, specific performance, and/or other equitable relief to prevent the breach of such obligations (in addition to any other rights and remedies to which the Buyer may be entitled in respect of any such breach).

(g) **Modification.** In the event that a court of competent jurisdiction determines that any of the provisions of this Section 9 would be unenforceable as written because it covers too extensive a geographic area, too broad a range of activities, or too long a period of time, or otherwise, then such provision will automatically be modified to cover the maximum geographic area, range of activities, and period of time as may be enforceable, and in addition, such court is hereby expressly authorized so to modify this Agreement and to enforce it as so modified. No invalidity or unenforceability of any section of this Agreement or any portion thereof will affect the validity or enforceability of any other section or of the remainder of such section.

(h) **Cross Corporate Guaranty.** National Data Corporation ("NDC") will guarantee the performance of the Seller hereunder as set forth in the agreement (the "Guaranty Agreement") attached hereto as Exhibit E. Notwithstanding any other provision herein to the contrary, NDC shall have the right to assign its liabilities under the Guaranty Agreement to any future parent of Seller without the Buyer's consent, provided that the future parent of Seller shall assume the liabilities of NDC associated with the Guaranty Agreement, and shall be a publicly traded company with assets in excess of \$300,000,000.

(i) **Burden of Proof.** If the Buyer seeks indemnification from the Seller in respect of any third-party claim that the Intellectual Property infringes the intellectual property or other proprietary rights of such third party, then as a condition to its rights hereunder (if any) to indemnification by the Seller in respect thereof, the Buyer will bear the burden of proving that such infringement did not result from any modification of or addition to the Intellectual Property following the Closing Date.

## 10. General.

(a) **Lock-Up Agreement.** If the Buyer makes any underwritten public offering of its securities and the Buyer or the managing underwriter of such offering so requests, the Seller will not without the prior written consent of the Buyer or such underwriter effect any sale or other distribution of the Buyer Shares, including any sale pursuant to SEC Rule 144, during a period of up to

- 19 -

180 days following the effective date of the registration statement in connection with such offering. The Seller will not transfer any of the Buyer Shares (other than pursuant to an effective registration statement under the Securities Act or SEC Rule 144) unless the transferee first agrees in writing to be bound by the restrictions on transfer of the Buyer Shares set forth in this Section 10(a).

(b) **Further Assurances.** From time to time after the date hereof, each party hereto will promptly execute and deliver all such further instruments and other documents, and will promptly take all such further actions, as the other party reasonably may request in order to vest title to the Purchased Assets in the Buyer, more effectively to effect or confirm the transactions contemplated hereby, and/or to carry out the purposes of this Agreement.

(c) **Survival of Provisions.** The provisions of this Agreement will be deemed material, and notwithstanding any investigation by or on behalf of the Buyer or the Seller, will be deemed to have been relied on by the other party, and will survive the consummation of the transactions contemplated hereby.

(d) **Expenses.** Each of the Buyer and the Seller will be responsible for and will pay all of its own expenses in connection with the negotiation and preparation of this Agreement and the consummation of the transactions contemplated hereby.

(e) **Benefits of Agreement; No Third-Party Beneficiaries.** This Agreement will bind and inure to the benefit of the parties hereto and their respective successors, and permitted assigns. Neither party will assign any rights or delegate any obligations hereunder without the consent of the other party, which consent will not be unreasonably withheld, except that either party may assign its rights (but not delegate its obligations) hereunder to its Affiliate, or assign its rights and delegate its obligations to any person into which the assigning party will merge or into which it will consolidate, or to any successor to all or substantially all of its assets. Any attempt to assign any rights or obligations under this Agreement other than as expressly permitted herein will be void. Nothing in this Agreement (including the Buyer's assumption of the Liabilities) will confer any rights or remedies on any person other than the parties hereto and their respective successors and permitted assigns.

(f) **Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same agreement. In pleading or proving this Agreement, it will be necessary to produce or account for only one set of such counterparts.

(g) **Construction.** The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of

- 20 -

strict construction will be applied against either party. The captions of sections or subsections of this Agreement are for reference only and will not affect the interpretation or construction of this Agreement.

(h) **Entire Agreement.** This Agreement, together with the exhibits and schedules hereto, contains the entire understanding and agreement among the parties, and supersedes any prior understandings or agreements among them, or between or among any of them, with respect to the subject matter hereof, including the non-binding letter of intent dated May 19, 2000.

(i) **Governing Law.** This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Delaware as applied to contracts made, and to be performed, within Delaware, and without reference to principles of conflicts or choice of laws.

(j) **Notices.**

All notices, demands and other communications hereunder will be sent to the individual named below, will be in writing, and will be delivered in person; deposited in the United States mail, certified or registered, with return receipt requested; sent via national overnight carrier; or sent via facsimile as long as the sending party has telephone confirmation that the entire facsimile was actually received by the receiving party.

(i) If to the Buyer, to:

Open Solutions Inc.  
300 Winding Brook Drive  
Glastonbury, Connecticut 06033  
Attention: Kevin Fahey

(ii) If to the Seller, to:

Global Payment Systems LLC  
National Data Plaza  
Atlanta, Georgia 30329-2010  
Attention: Office of the Corporate Secretary


The persons or addresses to which mailings or deliveries will be made may be changed from time to time by notice given pursuant to the provisions of this Section 10(j). Any notice, demand or other communication given pursuant to the provisions of this Section 10(j) will be deemed to have been given on the date actually delivered.

- 21 -


*[The rest of this page is intentionally left blank.]*

Executed and delivered as of the date first above written.

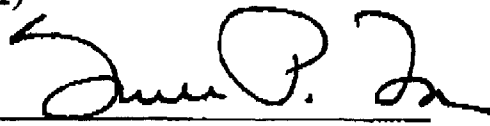
OPEN SOLUTIONS INC.

By   
Name: LOUIS HERNANDEZ JR  
Title: CEO

GLOBAL PAYMENT SYSTEMS LLC

By   
Name: SUELLYN P. TOYNAH  
Title: VICE PRESIDENT - LEGAL

NATIONAL DATA CORPORATION  
(Guarantor)

By   
Name: SUELLYN P. TOYNAH  
Title: VICE PRESIDENT - LEGAL