

02-27-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Software Clearing House, Inc. 858 Central Avenue Cincinnati, Ohio 45202

- Individual(s) Association General Partnership Corporation-State Other

2-11-02

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other Asset Purchase Agreement

Execution Date: 08/31/2001

2. Name and address of receiving party(ies)

Name: Merkur Group, Inc.

Internal

Address:

Street Address: 2950 Crescentville Road

City: West Chester State: OH Zip: 45069

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75/788,519

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: John P. Colbert

Internal Address: Graydon Head & Ritchey LLP

Street Address: 1900 Fifth Third Center

511 Walnut Street

City: Cincinnati State: OH Zip: 45202

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

02/26/2002 DBYRNE 00000175 75788519 John P. Colbert

01 FC:481

Name of Person Signing

Signature

January 15, 2002

Date

Total number of pages including cover sheet, attachments, and document: 42

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patent & Trademarks, Box Assignments, Washington, DC 20231 on January 15, 2002

Gerry Briede

TRADEMARK

REEL: 002449 FRAME: 0546

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE is entered into this 31st day of August, 2001 by and among Merkur Group, Inc., a Delaware corporation ("Buyer"), Legato Systems, Inc., a Delaware corporation ("Legato") and Software Clearing House, Inc., an Ohio corporation and a wholly-owned subsidiary of Legato ("Seller"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement (as defined below).

WHEREAS, Buyer, Legato and Seller have entered into an Asset Purchase Agreement, dated as of August 31, 2001 (the "Asset Purchase Agreement"), pursuant to which Seller has agreed to sell, assign, convey and deliver to Buyer and Buyer has agreed to purchase and acquire from Seller the Purchased Assets, including, without limitation, those certain assets identified in Schedules 2.01(a) through 2.01(e) to the Asset Purchase Agreement, and Buyer has agreed, in partial consideration therefor, to assume the Assumed Liabilities pursuant to Section 2.03 of the Asset Purchase Agreement; and

WHEREAS, Seller desires to sell, assign, transfer, convey and deliver to Buyer the Purchased Assets and Buyer desires to purchase and acquire the Purchased Assets therefrom;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably sells, assigns, conveys and delivers to Buyer, its successors and assigns, to have and to hold forever free and clear of all Liens, other than Permitted Liens, all right, title and interest of Seller in and to the Purchased Assets including, without limitation, those certain assets identified in Schedules 2.01(a) through 2.01(e) to the Asset Purchase Agreement.

Buyer hereby accepts the sale, assignment, conveyance and delivery of the Purchased Assets.

At any time or from time to time after the date hereof, at Buyer's request and without further consideration, Seller shall execute and deliver to Buyer such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Buyer, and to confirm Buyer's title to, all of the Purchased Assets, and, to the full extent permitted by Law, to put Buyer in actual possession and operating control of the Purchased Assets.

Notwithstanding any other provisions of this Bill of Sale to the contrary, nothing contained in this General Assignment and Bill of Sale shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including the warranties, covenants, agreements, conditions, representations or, in

general any of the rights and remedies, and any of the obligations and indemnifications of Buyer, Seller or Legato set forth in the Asset Purchase Agreement nor shall this General Assignment and Bill of Sale expand or enlarge any remedies under the Asset Purchase Agreement, including, without limitation, any limits on indemnification specified therein. This General Assignment and Bill of Sale is intended only to effect the transfer of certain property to be transferred pursuant to the Asset Purchase Agreement and shall be governed entirely in accordance with the terms and conditions of the Asset Purchase Agreement.

This General Assignment and Bill of Sale shall be binding upon Legato and Seller and their successors and assigns and shall inure to the benefit of Buyer and its successors and assigns.

This General Assignment and Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This General Assignment and Bill of Sale shall be governed by and construed in accordance with the laws of the State of Delaware applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this General Assignment and Bill of Sale in order for this General Assignment and Bill of Sale to be effective in any respect, then the laws of such other jurisdiction shall govern this General Assignment and Bill of Sale to such extent.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this General Assignment and Bill of Sale on the day and year first above written.

MERKUR GROUP, INC.

By: Rob Wadzinski
Name: Rob Wadzinski
Title: President

LEGATO SYSTEMS, INC.

By: _____
Name: Andrew Brown
Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

By: _____
Name: Edward J. Bauer
Title: President

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By: _____

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Title: President

LEGATO SYSTEMS, INC.

By:  _____

Name: Andrew Brown

Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

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Name: Edward J. Bauer

Title: President

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By: _____
Name: Andrew Brown
Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

By: Edward J. Bauer
Name: Edward J. Bauer
Title: President

ASSET PURCHASE AGREEMENT

by and among

MERKUR GROUP, INC.
a Delaware corporation,

LEGATO SYSTEMS, INC.
a Delaware corporation

and

SOFTWARE CLEARING HOUSE, INC.
an Ohio corporation and a
wholly-owned subsidiary of Legato Systems, Inc.

Dated as of August 31, 2001

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EXHIBITS

- Exhibit A - Form of Unsecured Promissory Note
- Exhibit B - Form of Transition Services Agreement
- Exhibit C - Form of General Assignment and Bill of Sale
- Exhibit D - Form of Assumption Agreement

ASSET PURCHASE AGREEMENT

This **Asset Purchase Agreement** is made as of August 31, 2001 by and among Merkur Group, Inc., a Delaware corporation ("Buyer"), Legato Systems, Inc., a Delaware corporation ("Legato") and Software Clearing House, Inc., an Ohio corporation and a wholly-owned subsidiary of Legato ("Seller").

W I T N E S S E T H :

WHEREAS, Legato is the owner of 100% of the issued and outstanding capital stock of Seller; and

WHEREAS, Merkur Group, an operating division of Seller, is a software and services organization engaged in the development, implementation and support of output communication solutions that enable organizations utilizing enterprise resource planning applications to communicate optimally based on content and in the forms preferred by their customers and trading partners (the "Business"); and

WHEREAS, Buyer desires to purchase the Purchased Assets (as defined below) and assume the Assumed Liabilities (as defined below) from Seller, and Seller desires to sell the Purchased Assets and the Assumed Liabilities to Buyer, upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, and the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. The following terms, as used herein, have the following meanings:

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such other Person.

"Ancillary Agreements" means the Note, the Transition Services Agreement, the General Assignment and Bill of Sale, the Assumption Agreement and the Conveyance Documents.

"Bankruptcy Event" means any of the following events: (a) Seller or any Subsidiary thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction relating to Seller, or any Subsidiary thereof; (b) there is commenced against Seller or any Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement; (c) Seller or any Subsidiary thereof is adjudicated insolvent or bankrupt, or any order of relief or other order approving any such case

or proceeding is entered; (d) Seller or any Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days; (e) Seller or any Subsidiary thereof makes a general assignment for the benefit of creditors; (f) Seller or any Subsidiary thereof fails to pay, or states that it is unable to pay or is unable to pay, its debts generally as they become due; (g) Seller or any Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (h) Seller or any Subsidiary thereof, by any act or failure to act, indicates its consent to, approval of or acquiescence in, any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Business Day” means any day on which banks are not required or authorized by Law or executive order to close in the City of Cincinnati.

“Closing Date” means the date of the Closing (as defined in Section 2.07).

“Contracts” means all contracts, agreements, commitments, warranties, leases, licenses, sales and purchase orders and other instruments and arrangements relating to the Business immediately prior to the Closing, including arrangements with and obligations to existing vendors, suppliers and customers of the Business that are not contained in a writing.

“Excluded Assets” means the assets of Seller, listed on Schedule 2.02 hereto, excluded from the Purchased Assets to be transferred hereunder.

“Intellectual Property” means, with respect to the Business: (i) trademarks, service marks, trade dress, logos, trade names and corporate names, whether or not registered (including the names and logos set forth on Schedule 2.01(b)), including all common law rights, and registrations and applications for registration thereof, (ii) copyrights (registered or otherwise) and registrations, applications for registration and licenses thereof, and all rights therein provided by international treaties or conventions, (iii) copies and tangible embodiments of all the foregoing, in whatever form or medium, (iv) all rights to obtain and rights to register trademarks and copyrights, and (v) all rights to sue or recover and retain damages and costs and attorneys’ fees for present and past infringement of any of the foregoing.

“Inventory” shall mean all inventories of licensed software, work in process, finished products, spare parts, replacement and component parts used or held for use by Seller for the operation of the Business immediately prior to the Closing Date.

“Knowledge of Seller” shall mean (i) the actual knowledge of any executive officer or senior business manager of Seller and (ii) the knowledge that any of the foregoing persons should have possessed upon a reasonable investigation regarding the accuracy of any representations or warranties of the Seller contained in this Agreement.

“Law” means any Federal, state, foreign or local statute, law, ordinance, regulation, rule, code, order, judgment, decree, other requirement or rule of law of the United States or any other jurisdiction and any other similar act or law.

“Licensed Intellectual Property” shall mean all Intellectual Property licensed or sublicensed by Seller from a third party.

“Lien” means any mortgage, liability, lien (including any tax lien), obligation, pledge, charge, security interest, lease or encumbrance of any kind.

“Material Adverse Effect” means any change in or effect on the business of Seller or its Affiliates that, individually or in the aggregate (taking into account all other such changes or effects), is, or is reasonably likely to be, materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Business taken as a whole.

“Material Contracts” shall mean the Contracts and agreements which are material to the conduct of the Business, or the absence of which would have a Material Adverse Effect on the Business, which Contracts are set forth on Schedule 2.01(a) hereto.

“Owned Intellectual Property” shall mean all Intellectual Property, in and to which Seller has a right to hold, right, title and interest.

“Person” means an individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Permitted Lien” means (a) any Lien of any kind for Taxes, assessments and other governmental charges not yet due or (b) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a liability that is not yet due and payable and does not materially impair the value of the property subject to such Lien or the use of such property in the conduct of the Business, including the Liens set forth on Schedule 3.05.

“Purchased Assets” means the assets used or held for use by Seller for the operation of the Business immediately prior to the Closing Date which Buyer is purchasing hereunder, including the Contracts, Intellectual Property, personal property, Inventory and other assets listed on Schedules 2.01(a) through 2.01(e) hereto.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, joint venture or other legal entity of which such Person (either alone or through or together with any other subsidiary of such Person) owns, directly or indirectly, a majority of the stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

“Tax” means any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid-up capital, profits, greenmail, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any governmental authority (domestic or foreign) responsible for the imposition of any such tax.

“Term Sheet” means the Summary of Terms, by and between Seller and Buyer, dated August 23, 2001, together with the spreadsheet attached thereto.

"Term Sheet Date" means August 23, 2001.

ARTICLE II

PURCHASE AND SALE

SECTION 2.01. Purchase and Sale. On the terms and subject to the conditions of this Agreement, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase and accept from Seller, on the Closing Date, all right, title and interest of Seller in and to the Purchased Assets, wherever located, which shall include the following:

(a) Contracts. All of the Contracts of the Business, including those Material Contracts listed on Schedule 2.01(a) hereto.

(b) Intellectual Property. All of the Owned Intellectual Property and Licensed Intellectual property of the Business, including the Intellectual Property listed on Schedule 2.01(b) hereto.

(c) Personal Property. All of the tangible personal property, furniture and fixtures, computer hardware and system software, product literature and software program memberships of the Business, including the items listed on Schedule 2.01(c) hereto.

(d) Inventory. All of the Inventory of the Business, including the Inventory listed on Schedule 2.01(d) hereto.

(e) Other Assets. All of the other assets of the Business listed on Schedule 2.01(e) hereto.

SECTION 2.02. Excluded Assets. Buyer expressly understands and agrees that none of the Excluded Assets listed on Schedule 2.02 hereto shall be purchased by Buyer hereunder and shall be excluded from the Purchased Assets.

SECTION 2.03. Assumption of Liabilities. On the Closing Date, Buyer shall assume and, from and after the Closing Date, shall perform the obligations of Seller expressly set forth in the Seller's Contracts relating to the Business, including the Material Contracts specifically listed on Schedule 2.01(a) hereto (other than liabilities or obligations attributable to any failure by Seller to comply with the terms thereof) (the "Contract Liabilities"). In addition, Buyer acknowledges and understands that Seller does not have written Contracts with all of the vendors, suppliers and customers of the Business and, notwithstanding this fact, agrees hereby to assume and, from and after the Closing Date, perform the obligations of Seller to each of the vendors, suppliers and customers of the Business, including those customers listed on Schedule 2.03 hereto, according to the understandings in place immediately prior to the Closing between the Seller and each such vendor, supplier and customer (the "General Obligations" and, together with the Contract Liabilities, the "Assumed Liabilities"). For the avoidance of doubt, the parties hereto agree that after the Closing Date, Buyer shall be responsible for all vendor, supplier and customer support obligations of any kind relating to the operation of the Business, whether or not

arising prior to or after the Closing Date, and such obligations shall be considered Assumed Liabilities hereunder.

SECTION 2.04. Excluded Liabilities. All of the liabilities of Seller except the Assumed Liabilities are herein referred to as the "Excluded Liabilities," and Buyer shall not assume any such obligations or liabilities of the Business or any liabilities attendant to any of the foregoing, of any nature whatsoever, whether known, unknown, liquidated or contingent and whether presently in existence or arising or asserted hereafter. For the avoidance of doubt, all liabilities and obligations relating to (a) Excluded Assets and (b) Seller's obligation to assume, perform, satisfy or pay any liability, obligation, agreement, debt, charge, claim, judgment or expense incurred by or asserted against Seller related to taxes, environmental matters, pension or retirement plans or trusts, profit-sharing plans, employment contracts, employee benefits, severance of employees, product liability or warranty, negligence, contract breach or default, or other obligations, claims or judgments related to the operation of the Business prior to the Closing are Excluded Liabilities.

SECTION 2.05. Assignment of Contracts and Rights. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without consent of a third party thereto, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Buyer or Seller thereunder. Seller and Buyer will use reasonable efforts (but without any payment of money by Seller or Buyer) to obtain the consent of the other parties to any such Purchased Asset or claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may request. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights, Seller and Buyer will cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including, without limitation, subcontracting, sub-licensing, or subleasing to Buyer, or under which Seller would enforce for the benefit of Buyer, with Buyer assuming the Seller's obligations, any and all rights of Seller against a third party thereto.

SECTION 2.06. Purchase Price. The purchase price for the Purchased Assets (the "Purchase Price") shall consist of (i) \$40,000.00, payable in accordance with the terms of an Unsecured Promissory Note (the "Note") executed by Buyer and Rob Wadzinski, an individual, and payable to Legato in the form attached hereto as Exhibit A and (ii) the assumption of the Assumed Liabilities. The Note shall bear interest at the rate of five percent (5%) per annum, will mature on February 28, 2002 and will be subject to the other terms and conditions set forth in the form attached as Exhibit A.

SECTION 2.07. Closing. The closing (the "Closing") of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall take place at the offices of Brobeck, Phleger & Harrison LLP, One Market, Spear Street Tower, San Francisco, CA 94105, as soon as the conditions set forth in Article VIII have been satisfied or waived, but in no event later than August 31, 2001, unless Buyer and Seller agree otherwise in writing. At the Closing,

(a) Buyer shall deliver to Legato the Purchase Price in the form of the Note as set forth in Section 2.06;

(b) Seller and Buyer shall enter into a General Assignment and Bill of Sale in the form attached hereto as Exhibit C and an Assumption Agreement in the form attached hereto as Exhibit D and Seller shall deliver to Buyer (i) such deeds, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment (the "Conveyance Documents") as the parties and their respective counsel shall deem reasonably necessary or appropriate to vest in Buyer all right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (except Permitted Liens), subject, in each case, to the provisions of Section 2.05 above and (ii) all of the Purchased Assets, by such means and to such locations as Buyer may reasonably request; and

(c) Seller and Buyer shall enter into the other Ancillary Agreements.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer, subject to the exceptions specifically disclosed in writing in Seller's disclosure schedules, all such exceptions to be referenced to a specific representation set forth in this Article III, that:

SECTION 3.01. Organization and Qualification; Subsidiaries of Seller. Seller has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Seller has no Subsidiaries. Legato is the owner of all outstanding shares of capital stock of Seller, and all such shares are held by Legato free of all Liens and duly authorized, validly issued, fully paid and nonassessable.

SECTION 3.02. Corporate Authorization. Seller has the necessary corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Seller and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or any of the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. No approval of the stockholder of Seller is necessary to authorize this Agreement or any of the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby (including, without limitation, the sale of the Purchased Assets). This Agreement and each of the Ancillary Agreements have been, or, in the case of the Ancillary Agreements, will be, duly executed and delivered by Seller and constitute valid and binding agreements of Seller, enforceable against Seller in accordance with their

respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and by principles of equity regarding the availability of remedies (whether in a proceeding at law or in equity).

SECTION 3.03. Governmental Authorization. The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements, and the consummation by Seller of the transactions contemplated hereby and thereby, do not and will not require any action by or in respect of, or filing with, any governmental body, agency, official or authority.

SECTION 3.04. Non-Contravention. The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements, and the consummation by Seller of the transactions contemplated hereby and thereby, do not and will not (i) contravene or conflict with the corporate charter or bylaws of Seller; (ii) contravene or conflict with or constitute a violation of any provision of any Law, judgment, injunction, order or decree binding upon or applicable to Seller or to the Business or relating to or affecting the Purchased Assets; or (iii) constitute a material default under or give rise to any right of termination, cancellation or acceleration of any Material Contract of Seller or to a loss of any material benefit relating to the Business to which Seller is entitled under any provision of any Material Contract binding upon Seller or by which any of Seller's assets is or may be bound.

SECTION 3.05. Title to Purchased Assets.

(a) Except for those Liens disclosed on Schedule 3.05 and other Permitted Liens, Seller owns, leases or has the legal right to use all of the Purchased Assets and has good and marketable title to, or, in the case of leased, subleased or licensed Purchased Assets, valid and subsisting leasehold interests in or licenses to, all of the Purchased Assets, free and clear of all Liens. The Business Loan Agreement, dated December 1, 1998, between Seller and Bank One Cincinnati NA, shall expire on August 31, 2001, there are no Notes outstanding thereunder, and Seller shall take reasonable steps to procure the filing by Bank One of a Form UCC-3 release in respect of any Liens field pursuant to such agreement as soon a practicable upon the expiration of such agreement.

(b) The Purchased Assets constitute all the properties, assets and rights forming a part of, used, held or intended to be used in, and all such properties, assets and rights as are necessary in the conduct of, the Business.

(c) Except as set forth in Schedules 3.05 and 3.07(a), Seller has the complete and unrestricted power and unqualified right to sell, assign, transfer, convey and deliver the Purchased Assets to Buyer without penalty or other adverse consequences.

SECTION 3.06. Litigation. There is no action, suit, claim, investigation or proceeding (or any basis therefor) pending against, or to the Knowledge of Seller, threatened against, or relating to or affecting, any of the Purchased Assets before any court or arbitrator or any governmental body, agency or official, and, to the Knowledge of Seller, there are no existing facts or circumstances that could reasonably be expected to result in such an action, suit, claim,

investigation or proceeding. Seller is not subject to any outstanding order, writ, injunction or decree which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or materially interfere with Seller's ability to consummate the transactions contemplated hereby or by the Ancillary Agreements.

SECTION 3.07. Material Contracts and Commitments.

(a) Schedule 2.01(a) lists all Material Contracts to which Seller is a party or which are binding on Seller as of the Closing Date. Except as disclosed in Schedule 3.07(a), each Material Contract: (i) is legal, valid and binding on the respective parties thereto and is in full force and effect, (ii) is freely and fully assignable to Buyer without penalty or other adverse consequences, and (iii) upon consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, except to the extent that any consents are not obtained as contemplated in Section 2.05, shall continue in full force and effect without penalty or other adverse consequence. Seller is not in breach of, or default under, any Material Contract.

(b) Except as disclosed in Schedule 3.07(b), no other party to any Material Contract is in breach thereof or default thereunder.

SECTION 3.08. Licenses and Permits. Seller has no material licenses, franchises, permits or other similar authorizations affecting, or relating in any way to, the Purchased Assets (the "Permits"), and no such Permits are necessary to use the Purchased Assets to conduct the Business.

SECTION 3.09. Compliance with Laws. Seller is not in violation of, Seller has not violated, and, to the Knowledge of Seller, Seller is not under investigation with respect to or has been threatened to be charged with or given notice of any violation of, any Law or judgment, order or decree entered by any court, arbitrator or governmental authority, domestic or foreign, applicable to the Purchased Assets or the conduct of the Business, except for such violations that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No material violation of any Law relating to or affecting any Purchased Asset currently exists. To the Knowledge of Seller, there are no developments relating to or affecting any of the Purchased Assets pending or threatened, which might reasonably be expected to materially detract from the value of such Purchased Assets, materially interfere with any present or intended use of any such Purchased Assets or materially adversely affect the marketability of such Purchased Assets.

SECTION 3.10. Intellectual Property.

(a) The rights of Seller in or to the Owned Intellectual Property and Licensed Intellectual Property do not conflict with or infringe on the rights of any other Person and Seller has not received any claim or written notice from any Person to such effect.

(b) Except as disclosed in Schedule 3.10(b): (i) all the Owned Intellectual Property is owned by Seller, free and clear of any encumbrance and (ii) no legal action has been made or asserted or is pending (nor, to the Knowledge of Seller has any legal action been threatened) against Seller either (A) based upon or challenging or seeking to

deny or restrict the use by Seller of any of the Owned Intellectual Property or (B) alleging that any services provided or products sold by Seller are being provided or sold in violation of any patents or trademarks, or any other rights of any Person. To the Knowledge of Seller, no Person is using any patents, copyrights, trademarks, service marks, trade names, trade secrets or similar property that are confusingly similar to the Owned Intellectual Property or that infringe upon the Owned Intellectual Property or upon the rights of Seller therein.

(c) Except as disclosed in Schedule 3.10(c): (i) no legal action has been made or asserted or is pending (nor, to the Knowledge of Seller has any legal action been threatened) against Seller either (A) based upon or challenging or seeking to deny or restrict the use by Seller of any of the Licensed Intellectual Property or (B) alleging that any Licensed Intellectual Property is being licensed, sublicensed or used in violation of any copyrights, trademarks, or any other rights of any Person; and (ii) to the Knowledge of Seller, no Person is using any copyrights, trademarks, service marks, trade names, trade secrets or similar property that are confusingly similar to the Licensed Intellectual Property or that infringe upon the Licensed Intellectual Property or upon the rights of Seller therein.

SECTION 3.11. Employees. Schedule 3.11 sets forth a list of the employees, independent consultants and leased or temporary employees of Seller employed for the Business immediately prior to the Closing.

SECTION 3.12. Intercompany Arrangements. Except as disclosed in Schedule 3.12, (a) since the Term Sheet Date, there have been no transactions between Seller and any of its Affiliates, or any director, officer, employee or stockholder of Seller relating to the Purchased Assets; and (b) no Affiliate of Seller owns or has any rights in or to any of the Purchased Assets, or properties or rights used by the Business in the ordinary course.

SECTION 3.13. Finders' Fees. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller who might be entitled to any fee or commission from Seller or any of its Affiliates upon consummation of the transactions contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller, subject to the exceptions specifically disclosed in the Buyer's disclosure schedules, if any, all such exceptions to be referenced to a specific representation set forth in this Article IV, that:

SECTION 4.01. Organization and Qualification. Buyer has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. As of the Closing Date, Buyer shall have

filed an application for qualification to do business as a foreign corporation in the state of Ohio with the appropriate authority of the state of Ohio.

SECTION 4.02. Corporate Authorization. Buyer has the necessary corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements, and to perform its obligations hereunder, and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements, and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement and each of the Ancillary Agreements have been, or, in the case of the Ancillary Agreements, will be, duly executed and delivered by Buyer and constitute valid and binding agreements of Buyer, enforceable against Buyer in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and by principles of equity regarding the availability of remedies (whether in a proceeding at law or in equity).

SECTION 4.03. Governmental Authorization. The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements, and the consummation by the Buyer of the transactions contemplated hereby and thereby, do not require any action by or in respect of, or filing with, any governmental body, agency, official or authority.

SECTION 4.04. Non-Contravention. The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements, and the consummation by the Buyer of the transactions contemplated hereby and thereby, do not and will not (i) contravene or conflict with the corporate charter or bylaws of Buyer, (ii) contravene or conflict with or constitute a violation of any provision of any material Law, judgment, injunction, order or decree binding upon or applicable to Buyer; or (iii) constitute a material default under or give rise to any right of termination, cancellation or acceleration of any material right or obligation of Buyer or to a loss of any material benefit relating to Buyer's business to which Buyer is entitled under any provision of any material Contract binding upon Buyer or by which any of Buyer's assets is or may be bound.

SECTION 4.05. Finders' Fees. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission from Buyer or any of its Affiliates upon consummation of the transactions contemplated by this Agreement.

ARTICLE V

COVENANTS OF SELLER

Seller agrees that:

SECTION 5.01. Conduct of the Business. Except as provided in this Agreement, from the date hereof until the Closing Date, Seller shall conduct the Business in the ordinary

course consistent with past practice, use their reasonable efforts to preserve intact the business organization and relationships with third parties of the Business, and to keep available the services of the present employees of the Business. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, Seller will not, with respect to the Purchased Assets:

- (a) sell, lease, license or otherwise dispose of any Purchased Assets except pursuant to existing Contracts disclosed to Buyer;
- (b) subject any of the Purchased Assets, or any part thereof, to any Lien or suffer such a Lien to exist;
- (c) take or fail to take any other action that would cause any of the representations and warranties made by Seller in this Agreement not to remain true and correct;
- (d) make, enter into, modify, amend in any material respect or terminate any Material Contract listed in Schedule 2.01(a);
- (e) impair the ability of any Person to perform under the terms of the Transition Services Agreement; or
- (f) authorize, or agree or commit to take, whether in writing or otherwise, any of the foregoing actions.

SECTION 5.02. Access to Information. From the date hereof until the Closing Date, Seller (a) will give Buyer, its counsel, financial advisors, financing sources, auditors and other authorized representatives and agents access upon reasonable notice to the offices, properties, books and records relating to the Purchased Assets, (b) will furnish to Buyer, its counsel, financial advisors, financing sources, auditors and other authorized representatives and agents, such financial and operating data and other information relating to the Purchased Assets as such Persons may reasonably request, and (c) will instruct its executive officers and senior business managers, employees, counsel, auditors and financial advisors to cooperate with Buyer in its investigation; provided that any investigation pursuant to this Section shall be conducted in such a manner as not to interfere unreasonably with the conduct of the business of Seller.

SECTION 5.03. Copies of Files and Data.

(a) Files. The parties hereto agree that Seller will retain ownership of all original copies of vendor, supplier and customer files relating to the Business after the Closing Date; provided, however, that during the thirty (30) day period from and after the Closing Date, Seller shall allow Buyer and Buyer's officers, employees and agents reasonable access to such files for the purpose of copying such files at Buyer's expense. The parties agree that any copying done by Buyer pursuant to this Section shall be conducted in such a manner as not to interfere unreasonably with the conduct of the business of Seller.

(b) Data. The parties hereto agree that Seller will retain ownership of all original electronic data relating to or used by the Business in the conduct of its operations prior to the Closing Date; provided, however, that during the thirty (30) day period from and after

the Closing Date, Seller shall allow Buyer and Buyer's officers, employees and agents reasonable access to such electronic data for the purpose of copying such data at Buyer's expense. The parties agree that any copying done by Buyer pursuant to this Section shall be conducted in such a manner as not to interfere unreasonably with the conduct of the business of Seller. Notwithstanding the foregoing, Buyer's right to copy Seller's electronic data shall be limited to the following data:

- (i) Data regarding companies that have made any Merkur Group purchase, have been contacted by a Merkur Group representative or have been sent Merkur Group marketing literature, including associated demographic and credit information;
- (ii) Data regarding contact information for Persons that have been contacted by a Merkur Group representative or have been sent Merkur Group marketing literature;
- (iii) Data regarding activity information where the activity is a Merkur Group campaign or involved a Merkur Group representative;
- (iv) Data regarding support incidents and problems that refer to Merkur Group products;
- (v) Data regarding maintenance contracts, accounts receivable and sales history for Merkur Group products; and
- (vi) Data regarding emails sent or received by any Transferred Employees (as defined in Section 7.01) that concern the operations of the Business.

SECTION 5.04. Notices of Certain Events. From the date hereof until the Closing Date, Seller shall promptly notify Buyer of:

- (i) any notice or other communication from any Person alleging that the consent of such Person is required to assign a Contract to Buyer pursuant to this Agreement;
- (ii) any notice or other communication from any governmental or regulatory agency or authority in connection with the Business or the transactions contemplated by this Agreement; and
- (iii) any actions, suits, claims, investigations or proceedings commenced or, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting Seller or the Business that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.08 or that otherwise relate to the consummation of the transactions contemplated by this Agreement (including, without limitation, any Bankruptcy Event).

SECTION 5.05. Consents and Approvals. Seller (a) shall, at its cost and expense, use reasonable efforts to obtain all consents required in connection with its execution, delivery and performance of this Agreement and (b) shall diligently assist and cooperate with Buyer in preparing and filing all documents required to be submitted by Buyer to any governmental or regulatory authority, domestic or foreign, in connection with such transactions and in obtaining any governmental consents, waivers, authorizations or approvals which may be required to be obtained by Buyer in connection with such transactions (which assistance and cooperation shall include, without limitation, timely furnishing to Buyer all information concerning Seller that counsel to Buyer reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, authorization or approval).

SECTION 5.06. Trademarks; Tradenames. As soon as practicable (but in no event later than 15 Business Days) after the Closing Date, Seller shall eliminate the use of all of the trademarks, tradenames, service marks and service names used in connection with the Purchased Assets, in any of their forms or spellings, on all advertising, stationery, business cards, checks, purchase orders and acknowledgments, customer agreements and other contracts and business documents; provided, however, that Seller may continue such use until December 31, 2001 in connection with Seller's collection of accounts receivable in the ordinary course of business. From and after that date, Buyer shall eliminate the use of all of the trademarks, tradenames, service marks and service names of Seller held following the Closing Date used in connection with the Purchased Assets.

SECTION 5.07. No Negotiation with Third Parties. Prior to the Closing, Seller shall not, directly or indirectly, and Seller shall cause its respective officers, directors, employees, accountants, counsel, consultants, advisors, agents and other Affiliates (collectively, "Representatives") not to, directly or indirectly, solicit, initiate or encourage (including by way of furnishing nonpublic information), any inquiries or the making of any proposal or offer that constitutes, or may reasonably be expected to lead to, any acquisition of the Purchased Assets, whether by way of asset purchase, stock purchase, merger or otherwise (a "Competing Transaction"), or enter into or maintain or continue discussions or negotiate with any person in furtherance of such inquiries or to obtain a Competing Transaction, or agree to or endorse any Competing Transaction, or authorize or permit any of Seller's Representatives or Subsidiaries, or any representative retained by any of Seller's Subsidiaries, to take any such action. Seller shall immediately cease and cause to be terminated all existing discussions or negotiations with any parties conducted heretofore with respect to a Competing Transaction. Seller shall not release any third party from, or waive any provision of, any confidentiality or standstill agreement to which it is a party.

SECTION 5.08. Tax Matters. Any transfer, documentary, sales, use or other Taxes assessed upon or with respect to the transfer of the Purchased Assets to Buyer and any recording or filing fees with respect thereto shall be borne by Seller.

SECTION 5.09. Employee Matters. Seller shall terminate the employment of each of the employees listed on Schedule 3.11 as of the end of business on August 31, 2001. In connection with these terminations, Seller agrees to pay each such employee all earned but unused vacation as of the end of business on August 31, 2001. Seller agrees to pay to such

employees all earned but unpaid sales commissions or bonuses relating to sales made prior to the end of business on August 31, 2001.

ARTICLE VI

COVENANTS OF THE PARTIES

SECTION 6.01. Reasonable Efforts; Further Assurances. The parties hereto agree that:

(a) Subject to the terms and conditions of this Agreement, each party will use its reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement. Seller and Buyer each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and to vest in Buyer good and marketable title to the Purchased Assets.

(b) After the Closing Date, upon reasonable written notice, Buyer and Seller shall furnish or cause to be furnished to each other and their employees, counsel, auditors and representatives access, during normal business hours, to such information and assistance relating to or affecting the Purchased Assets (to the extent within the control of such party) as is reasonably necessary for financial reporting and accounting matters.

(c) After the Closing Date, upon reasonable written notice, Buyer and Seller shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance (to the extent within the control of such party) relating to the Purchased Assets (including, access to books and records) as is reasonably necessary for the filing of all Tax returns, and making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding related to any Tax return. Buyer and Seller shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Business. Seller shall retain the books and records of Seller concerning the Purchased Assets, if any, for a period of three years after the Closing Date, and will provide Buyer with reasonable access to such books and records as provided herein. After the end of such three-year period, before disposing of such books or records, Seller shall give notice to such effect to Buyer and to give Buyer, at Buyer's cost and expense, an opportunity to remove and retain all or any part of such books or records as Buyer may select. In the event that Seller shall after the Closing Date take any position in any state or Tax return, or reach any settlement or agreement on audit, which is in any manner inconsistent with any position taken by Seller in any filing, settlement or agreement made by Seller prior to the Closing and such inconsistent position (i) requires the payment by Buyer of more Tax than would have been required to be paid had such position not been taken or such settlement or agreement not been reached, (ii) affects the determination of useful life, basis or method of depreciation, amortization or accounting of any of the Purchased

Assets or any of the properties, assets or rights of Buyer or (iii) accelerates the time at which any Tax must be paid by Buyer. Seller shall provide timely and reasonable notice to Buyer of such position.

(d) Neither party shall be required by Section 6.01(b) or (c) to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations (or, in the case of Buyer, the Business). For the avoidance of doubt, any information received by Seller or Buyer following the Closing Date shall be subject to the provisions of Section 6.03 hereof.

SECTION 6.02. Certain Filings. Seller and Buyer shall cooperate with one another (a) in determining whether any action by, or in respect of, or filing with, any governmental body, agency, official or authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (b) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

SECTION 6.03. Confidentiality.

(a) For the purposes of this Section 6.03, Legato and Seller together are considered one party to this Agreement, and Buyer is considered the other party hereto.

(b) Each party hereto will protect the other's Confidential Information, as defined in Section 6.03(c) below, from unauthorized dissemination and use the same degree of care that such party uses to protect its own like information, but in no event less than a reasonable degree of care. Neither party hereto will disclose to third parties the other party's Confidential Information without the prior written consent of the other party. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Notwithstanding the foregoing, either party may use or disclose Confidential Information to the extent such party is legally compelled to disclose such Confidential Information, provided, however, that prior to any such compelled disclosure, the disclosing party will notify the non-disclosing party and will cooperate fully with the non-disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.

(c) "Confidential Information" means (i) all information identified as being confidential by the disclosing party or any information, whether or not so marked, that is released to the other party after the Closing Date pursuant to a disclosure obligation set forth in this Agreement and (ii) any information that has commercial and other value in the disclosing party's business (which, in the case of Buyer, shall be the Business and in the case of Legato and Seller, shall be Legato's and Seller's ongoing business operations not including the Business) and is confidential in nature including, but not limited to, formulas, computer programs, databases, mask works, technical drawings, algorithms, trade secrets, patents, patent applications, technology, circuits, layouts, names and expertise of employees and consultants, know-how, designs, interfaces, materials,

formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, supplier information, forecasts, strategies and information. "Confidential Information" will not include information that the receiving party can show: (a) is or becomes generally known or publicly available through no fault of the receiving party; (b) is lawfully obtained from a third party who has the right to make such disclosure; or (c) is independently developed without reference to such Confidential Information and can be documented accordingly.

(d) Immediately upon a request by the disclosing party at any time, the receiving party will turn over to the disclosing party any Confidential Information of the disclosing party in its possession and all documents or media containing any such Confidential Information and any and all copies or extracts thereof.

SECTION 6.04. Public Announcements. Buyer and Seller shall consult with each other before issuing any press release concerning this Agreement or the transactions contemplated hereby or otherwise making any public statements with respect to this Agreement, or the transactions contemplated hereby, and Buyer shall not issue any such press release or make any such public statement without the prior written approval of Legato, except to the extent required by applicable Law, in which case Buyer shall use all reasonable efforts to consult with Seller before issuing any such release or making any such public statement. Buyer and Seller shall mutually agree on the text of any public announcement to be made by Buyer in connection with the Business or the Purchased Assets, and following such approval, Buyer may include such text in any public announcement or press release without obtaining the consent of Seller and Legato for a period of one (1) year after the Closing Date, after which time Buyer shall obtain the written consent of Legato to use the name of Seller or Legato in any such public announcement or press release.

SECTION 6.05. Transition Services Agreement; Other Customer Matters. As of the Closing Date, the parties shall enter into a transition services agreement, substantially in the form set forth as Exhibit B (the "Transition Services Agreement").

SECTION 6.06. Employee Matters. Except as provided for in Section 7.01, Buyer shall not, during the one (1) year period following the Closing Date (and shall cause its respective employees, officers, directors and Affiliates not to), directly or indirectly, solicit the services of or hire, whether as an employee or an independent contractor of Buyer or any of its Affiliates, any individual who was an employee of Seller on the Closing Date; provided, however, that the foregoing restriction shall not apply to any such employee that (i) terminated his or her employment voluntarily subsequent to the Closing Date (and without any solicitation by Buyer) or (ii) was terminated by Seller involuntarily after the Closing Date. If Buyer hires within one (1) year of the Closing Date any former employee of Seller that Seller paid a severance package to upon his or her termination from employment with Seller, Buyer agrees to pay to Seller a fee equal to 100% of the dollar amount of the severance paid to such employee by Seller, plus related payroll taxes.

SECTION 6.07. Release of Liens. Except for Permitted Liens, at or prior to the Closing, Seller shall obtain the release (or agreement to release upon payoff of amounts due) of all Liens on the Purchased Assets and shall duly file releases or terminations of all such Liens in

each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed.

ARTICLE VII

EMPLOYEE MATTERS

SECTION 7.01. Employees and Offers of Employment.

(a) On or prior to the Closing Date, Buyer shall have the right, but not the obligation, to offer employment to all of the employees of Seller that perform services in connection with the Business as set forth on Schedule 3.11 (a "Potentially Transferred Employee"). Any such offers shall be at such salary or wage and benefit levels and on such other terms and conditions as Buyer shall in its sole discretion deem appropriate. The employees who accept and commence employment with Buyer are hereinafter collectively referred to as the "Transferred Employees." Seller shall provide Buyer access to files, records and other materials relating to the Potentially Transferred Employees, including, without limitation, information relating to compensation and benefits, pursuant to the terms of Section 5.02 hereof. Buyer shall not assume responsibility for any Transferred Employee until such employee commences employment with Buyer.

(b) Seller shall be responsible for the payment of all compensation and accrued employee benefits payable to all Transferred Employees through 12:01 a.m., Eastern time, on September 1, 2001. Seller acknowledges and agrees that it, and not Buyer, is and shall after the Closing remain solely responsible for any and all wages, compensation, commission, bonuses, severance pay, insurance, supplemental pension, deferred compensation, retirement and any other benefits, premiums and claims, due, to become due, committed, accrued or otherwise promised to any person who, as of the Closing Date, is a retiree, former employee, current employee of Seller, relating to the period up to the Closing Date. Buyer, as purchaser of the Purchased Assets, shall assume no employee benefit plans, programs, policies, or practices, whether or not set forth in writing, maintained by Seller at any time. In no event shall Buyer be liable for any severance or other termination payments or benefits which may become payable to the Transferred Employees in connection with termination of their employment with Seller.

(c) Neither Seller nor any of its Affiliates shall modify, amend or otherwise alter any non-competition or other similar restrictions with any Potentially Transferred Employee (or any former employee of Seller that would be a Potentially Transferred Employee if in the employ of Seller on the date hereof) without the prior written consent of Buyer, and Seller shall not waive, and Seller shall use its reasonable efforts to enforce, at Buyer's expense (provided that, any such expense has been previously approved by Buyer in writing), such non-competition or other restrictions in connection with any violation thereof. Seller hereby agrees to release (and to cause any Affiliate to release) any Potentially Transferred Employee to which Buyer makes an offer of employment

from the provisions of any non-competition or other similar restrictions in order to allow such Potentially Transferred Employee to accept such offer of Buyer.

SECTION 7.02. No Third Party Beneficiaries. No provision of this Article VII shall create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of Seller (whether or not a Potentially Transferred Employee) with respect to continued employment (or resumed employment) with Buyer, and no provision of this Article VII shall create any such rights in any such Persons with respect to any benefits that may be provided, directly or indirectly, under any plan or arrangement that may be established by Buyer. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of Buyer.

ARTICLE VIII

CONDITIONS TO CLOSING

SECTION 8.01. Conditions to the Obligations of Each Party. The obligations of Buyer and Seller to consummate the transactions contemplated hereby are subject to the satisfaction of the following conditions:

(a) No judgment, injunction, order or decree shall have been issued declaring this Agreement invalid, nor shall any judgment, injunction, order, decree or applicable Law prohibit the consummation of the transactions contemplated hereby;

(b) Buyer and Seller shall have executed and delivered to the other each of the Ancillary Agreements; and

(c) All actions by or in respect of or filings with any governmental body, agency, official or authority required to permit the consummation of the transactions contemplated hereby shall have been obtained.

SECTION 8.02. Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions contemplated hereby is subject to the satisfaction of the following further conditions:

(a) (i) Seller shall have performed in all material respects all of its covenants and obligations hereunder required to be performed by it at or prior to the Closing Date, (ii) the representations and warranties of Seller contained in this Agreement as of the date hereof shall be true and correct in all material respects (or in all respects for any representation and warranty qualified as to materiality or material adverse effect) as of the date hereof and at and as of the Closing Date as if made at and as of such date, and (iii) Buyer shall have received a certificate signed by the President of Seller to the foregoing effect;

(b) Since the Term Sheet Date, no Material Adverse Effect shall have occurred; and

(c) Seller shall have entered into the Transition Services Agreement.

SECTION 8.03. Conditions to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated hereby is subject to the satisfaction of the following further conditions:

(a) Buyer shall have performed in all material respects all of its covenants and obligations hereunder required to be performed by it at or prior to the Closing Date, (ii) the representations and warranties of Buyer contained in this Agreement as of the date hereof and in any certificate or other writing delivered by Buyer pursuant hereto shall be true and correct in all material respects (or in all respects for any representation and warranty qualified as to materiality or material adverse effect) as of the date hereof and as of the Closing Date, as if made at and as of such date and (iii) Seller shall have received a certificate signed by a duly authorized officer of Buyer to the foregoing effect;

(b) Buyer shall have entered into the Transition Services Agreement.

(c) Seller shall have received duly executed stock certificates representing 19.5% of the issued and outstanding capital stock of Buyer (calculated on a fully-diluted basis after giving effect to the issuance of 1,000 shares of Buyer's authorized capital stock), and such shares shall have been duly authorized, validly issued, fully paid and nonassessable.

ARTICLE IX

SURVIVAL; INDEMNIFICATION

SECTION 9.01. Survival. The covenants, agreements, representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing until twelve (12) months after the Closing Date, except in the case of the warranties of title in Section 3.05(a) and the provisions concerning confidentiality in Section 6.03, which shall survive indefinitely. Notwithstanding the preceding sentence, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under Sections 9.02 or 9.03 shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy or breach thereof giving rise to such right to indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

SECTION 9.02. Indemnification. Seller and Legato hereby jointly and severally indemnify Buyer and its Affiliates and their respective officers, directors, employees and agents against, and agrees to hold each of them harmless from, any and all damages, claims, debts, actions, assessments, judgments, losses, liabilities, fines, fees, penalties and expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) (collectively, "Losses") incurred or suffered by any of them arising out of:

(i) any misrepresentation, inaccuracy or breach of representation and warranty made by Seller pursuant to this Agreement or the Ancillary Agreements;

(ii) any breach of covenant or agreement to be performed by Seller pursuant to this Agreement or the Ancillary Agreements;

(iii) the failure of Seller to assume full responsibility for any Excluded Liability or any obligation or liability of the Business relating to the Excluded Assets or the failure to pay and discharge when due any Excluded Liability, or any claim or cause of action by any party against such indemnities with respect to any Excluded Liability; and

(iv) any severance obligations relating to the termination prior to the Closing Date by Seller of employment of any Potentially Transferred Employees.

(b) Buyer hereby indemnifies Seller, Legato, their Affiliates, and their respective officers, directors, employees and agents against, and agrees to hold each of them harmless from, any and all Losses incurred or suffered by such parties arising out of any misrepresentation, inaccuracy or breach of representation and warranty, covenant or agreement made or to be performed by the Buyer pursuant to this Agreement or the Ancillary Agreements.

(c) Except with respect to claims based on fraud or willful misconduct, Seller's and Legato's indemnification obligations under Sections 9.02(a)(i) and (ii) above shall be limited to the Purchase Price. Except with respect to claims based on fraud or willful misconduct or a breach of the covenants in Section 6.06, Buyer's indemnification obligations under Section 9.02(b) shall be limited to the Purchase Price.

(d) Notwithstanding the foregoing, an Indemnified Person (as defined below) may not make a claim for Losses under Sections 9.02(a)(i) or (ii) or Section 9.02(b) until the aggregate amount of such claims by all Indemnified Persons exceeds \$5,000.

SECTION 9.03. Procedures; No Waiver; Exclusivity.

(a) All claims for indemnification by an Indemnified Person pursuant to this Article IX shall be made in accordance with the provisions of this Section 9.03.

(b) A party entitled to indemnification under this Article IX (the "Indemnified Person") shall give prompt written notification to the Person obligated to provide such indemnification (the "Indemnifying Person") of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification pursuant to this Article IX may be sought; provided, however, that no delay on the part of the Indemnified Person in notifying the Indemnifying Person shall relieve the Indemnifying Person from any liability or obligation under this Article IX except to the extent of any damage or liability caused solely by or arising solely out of such delay. Within 20 days after delivery of such notification, the Indemnifying Person may, upon written notice thereof to the Indemnified Person, assume control of the defense of such action, suit or proceeding with counsel reasonably satisfactory to the Indemnified Person; provided that

(i) the Indemnifying Person acknowledges in writing to the Indemnified Person that the Indemnifying Person shall indemnify the Indemnified Person with respect to all elements of such action, suit or proceeding and any damages, fines, costs or other liabilities that may be assessed against the Indemnified Person in connection with such action, suit or proceeding, and (ii) the third party seeks monetary damages only. If the Indemnifying Person does not so assume control of such defense, the Indemnified Person shall control such defense. The party not controlling such defense may participate therein at its own expense; provided that if the Indemnifying Person assumes control of such defense and the Indemnified Person is advised by counsel in writing that the Indemnifying Person and the Indemnified Person may have conflicting interests or different defenses available with respect to such action, suit or proceeding, the reasonable fees and expenses of a single counsel per applicable jurisdiction to the Indemnified Person shall be considered "Losses" for purposes of this Agreement and shall be paid by the Indemnifying Party. The party controlling such defense shall keep the other party advised of the status of such action, suit or proceeding and the defense thereof and shall consider in good faith recommendations made by the other party with respect thereto. An Indemnified Person shall not agree to any settlement of such action, suit or proceeding without the prior written consent of the Indemnifying Person, which shall not be unreasonably withheld or delayed. The Indemnifying Person shall not agree to any settlement or the entry of a judgment in any action, suit or proceeding without the prior written consent of the Indemnified Person, which shall not be unreasonably withheld (it being understood that it is reasonable to withhold such consent if, among other things, the settlement or the entry of a judgment (A) lacks a complete release of the Indemnified Person for all liability with respect thereto or (B) imposes any liability or obligation on the Indemnified Person).

ARTICLE X

TERMINATION

SECTION 10.01. Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

- (i) by mutual written agreement of Seller and Buyer; or
- (ii) by Seller if any of the conditions set forth in Section 8.01 or 8.03 shall have become incapable of fulfillment, and shall not have been waived by Seller; or
- (iii) by Buyer if any of the conditions set forth in Section 8.01 or 8.02 shall have become incapable of fulfillment, and shall not have been waived by Buyer; or
- (iv) by Seller or Buyer if the Closing shall not have been consummated on or before August 31, 2001;

provided however, that a party seeking termination pursuant to clauses (ii), (iii) or (iv) is not then in material breach of any of its representations, warranties, covenants or obligations

contained in this Agreement. The party desiring to terminate this Agreement pursuant to clauses (ii), (iii) or (iv) shall give notice of such termination to the other party.

SECTION 10.02. Effect of Termination. If this Agreement is terminated as permitted by Section 10.01, except as set forth below, such termination shall be without liability of either party (or any Affiliate, shareholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement; provided that if such termination shall result from the fraud or willful misconduct of either party in the failure to satisfy a condition to the performance of the obligations of the other party or to perform a covenant of this Agreement or from any act of fraud or willful misconduct in connection with a breach by either party to this Agreement, such party shall be fully liable for any and all Losses incurred or suffered by the other party as a result of such failure or breach. The provisions of Section 11.02 shall survive any termination hereof pursuant to Section 10.01.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iii) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the addresses set forth below or at such other address or addresses as a party hereto may designate by ten days advance written notice to the other party hereto:

if to Buyer, to:

Merkur Group, Inc.
1100 Three Centennial Plaza
895 Central Avenue
Cincinnati, OH 45202
Attn: Rob Wadzinski, President
Facsimile No.: (513) 579-1064

with a copy to:

Graydon, Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202
Attn: Jeff Stainton, Esq.
Facsimile No.: (513) 651-3836

if to Seller, to:

Software Clearing House, Inc.
1100 Three Centennial Plaza
895 Central Avenue
Cincinnati, OH 45202
Attn: Edward J. Bauer, President
Facsimile No.: (513) 579-1064

and

Legato Systems, Inc.
2350 West El Camino Real
Mountain View, CA 94040
Attn: Noah D. Mesel, Vice President and General Counsel
Facsimile No.: (650) 210-7426

with a copy to:

Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, CA 94105
Attn: John W. Larson, Esq.
Facsimile No.: (415) 442-1010

(a) Any provisions of this Agreement may be amended or waived prior to the Closing Date if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 11.02. Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. Seller shall pay all recording and filing fees that may be imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets.

SECTION 11.03. Successors and Assigns. Except as otherwise provided in this Agreement, neither party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect. The

provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 11.04. Governing Law. The validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without reference to the conflict of laws principles thereof; except that the matters relating to Seller and its Board of Directors which are required to be governed by the laws of the State of Ohio, shall be governed by, and construed in accordance with, the laws of the State of Ohio. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in any Ohio state or federal court sitting in the city of Cincinnati.

SECTION 11.05. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto.

SECTION 11.06. Entire Agreement; Severability. This Agreement (including the Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement (including, without limitation, the Term Sheet, which for the avoidance of doubt, is hereby terminated and superseded). No representation, inducement, promise, understanding, condition or warranty not set forth herein or therein has been made or relied upon by either party hereto. None of this Agreement or the Ancillary Agreements is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the purchase and sale of the Purchased Assets is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner to the fullest extent permitted by applicable Law in order that the purchase and sale of the Purchased Assets may be consummated as originally contemplated to the fullest extent possible.

SECTION 11.07. Bulk Sales Laws. Buyer and Seller each hereby waive compliance by Seller with the provisions of the "bulk sales", "bulk transfer" or similar laws of any state. Seller agrees to indemnify and hold Buyer harmless against any and all claims, losses, damages, liabilities, costs and expenses incurred by Buyer or any of its Affiliates as a result of any failure to comply with any such "bulk sales", "bulk transfer" or similar laws (which shall be considered "Losses" for purposes of Article IX of this Agreement).

SECTION 11.08. Headings; Interpretation. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The parties have participated jointly in the

negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

SECTION 11.09. Incorporation of Exhibits and Schedules. The Exhibits and Schedules referred to in this Agreement are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MERKUR GROUP, INC.

By: Rob Wadzinski
Name: Rob Wadzinski
Title: President

LEGATO SYSTEMS, INC.

By: _____
Name: Andrew J. Brown
Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

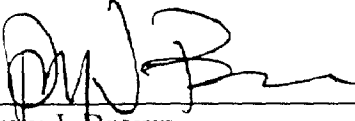
By: _____
Name: Edward J. Bauer
Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MERKUR GROUP, INC.

By: _____
Name: Rob Wadzinski
Title: President

LEGATO SYSTEMS, INC.

By:  _____
Name: Andrew J. Brown
Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

By: _____
Name: Edward J. Bauer
Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MERKUR GROUP, INC.

By: _____
Name: Rob Wadzinski
Title: President

LEGATO SYSTEMS, INC.

By: _____
Name: Andrew J. Brown
Title: Chief Financial Officer

SOFTWARE CLEARING HOUSE, INC.

By: Edward J. Bauer
Name: Edward J. Bauer
Title: President

EXHIBIT A

Form of Unsecured Promissory Note

[SEE TAB #A4]

EXHIBIT B

Form of Transition Services Agreement

[SEE TAB #A3]

EXHIBIT C

Form of General Assignment and Bill of Sale

[SEE TAB #A5]

EXHIBIT D

Form of Assumption Agreement

[SEE TAB #A6]