

11-14-2002



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

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):

Ecutel, Inc.

11-7-02

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

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

2. Name and address of receiving party(ies)

Name: McDonnell & Associates, L.P.

Internal

Address:

Street Address: 7984 Georgetown Pike

City: McLean State: VA Zip: 22102

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other Rider to Security Agreement

Execution Date: 10/10/2002

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

A. Trademark Application No.(s)

75/472270

B. Trademark Registration No.(s)

2591098

2620245

Additional number(s) attached Yes No

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

Name: Steven A. Cohen, Esq.

Internal Address:

Arent Fox Kintner Plotkin & Kahn, PLLC

Street Address:

1050 Connecticut Avenue, NW

City: Washington State: DC Zip: 20036

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41): \$ 90.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.

Steven A. Cohen, Esq.

Name of Person Signing

Signature

10-31-02

Date

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

17

11/13/2002 LHMJELLER 00000144 75472270

Main documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:6521 02 FC:6522

40.00 OP 50.00 OP

TRADEMARK REEL: 002615 FRAME: 0507

**RECORDATION FORM COVER SHEET  
TRADEMARKS**

For: Registration Numbers 2591098 (ECUTEL) and 2620245 (VIATORES)  
and Pending Application Serial Number 75/472270 (VIATORES)

Box 2. Continuation

McDonnell Charitable Foundation

Corporation - State: Virginia

Address:  
7984 Georgetown Pike  
McLean, VA 22102

Jürgen Manchot

Individual Citizenship - Germany

Address:  
Henkel KgAa  
Henkelstrasse 67  
D-40191 Dusseldorf  
GERMANY

## **RIDER TO SECURITY AGREEMENT TRADEMARKS**

**THIS RIDER TO SECURITY AGREEMENT (“Rider”)** is executed as of October 10, 2002 by and between (i) **Ecutel, Inc.**, a Delaware corporation (the “**Grantor**”), and (ii) **McDonnell & Associates, L.P.**, a Virginia limited partnership, **McDonnell Charitable Foundation**, and **Jürgen Manchot** (the “**Lenders**”). This Rider is incorporated into and made part of that certain Security Agreement, as amended (“**Security Agreement**”), between the Grantor and the Lenders and also into certain other related financing documents and security agreements executed by and between the Grantor and the Lenders or by and between the Borrower (as defined in the Security Agreement) and the Lenders (all such documents including this Rider being collectively referred to as “**Loan Documents**”). All capitalized terms not otherwise defined in this Rider shall have the meanings ascribed to such terms in the other Loan Documents.

The Grantor has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule “A” attached hereto and made part hereof (all such marks or names and any hereafter acquired marks or names hereinafter referred to as the “**Trademarks**”).

The Grantor desires to grant and the Lenders desire to acquire a lien and security interest on the Trademarks and the registration thereof, together with all existing and hereafter acquired goodwill of the Grantor associated therewith and represented thereby, as security for all of the Obligations (as defined in the Security Agreement) to the Lenders, and the Lenders desire to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

**NOW, THEREFORE**, with the foregoing background deemed incorporated by reference and made part hereof, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. **Grant of Security Interest.** In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, the Grantor grants a lien and security interest to the Lenders in all its present and future right, title and interest in and to the Trademarks, together with all existing and hereafter, acquired goodwill of the Grantor associated with and represented by the Trademarks and the registration thereof, and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. **Representations and Warranties.** Subject to the disclosures set forth pursuant to the Loan Agreement, as amended, by and between the Grantor and the Lenders, the Grantor represents, warrants and covenants that: (a) it has the right to use the Trademarks; (b) the Grantor is the sole and exclusive owner of the entire and unencumbered (except for encumbrances created pursuant to the Loan Documents and this Rider) right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges, and encumbrances, including, without limitation, pledges, assignments, licenses and

covenants by the Grantor not to sue third persons; (c) the Grantor has the unqualified right to enter into this Rider and perform its terms; (d) the Grantor has used, and will continue to use for the duration of this Rider, proper notice, as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks; and (e) the Grantor has used, and will continue to use for the duration of this Rider, consistent standards of quality in products leased or sold under the Trademarks and hereby grants to the Lenders and their employees and agents the right to visit the Grantor's locations which lease, sell or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times and upon reasonable notice during regular business hours to ensure the Grantor's compliance with this paragraph 2.

**3. Covenants.** The Grantor further covenants that: (a) until all of the Obligations have been satisfied in full, the Grantor will not enter into any agreement, including without limitation, any license agreement, which is inconsistent with the Grantor's obligations under this Rider; and (b) if the Grantor acquires rights to any new Trademarks, the provisions of this Rider shall automatically apply thereto and the Grantor shall give the Lenders prompt written notice thereof along with an amended Schedule "A"; provided, however, that notwithstanding anything to the contrary contained in this Agreement, the Grantor shall have the right to enter into agreements in the ordinary course of business with respect to the Trademarks.

**4. Exclusive Use of Trademarks.** So long as this Rider is in effect and so long as the Grantor has not received notice from the Lenders that an Event of Default has occurred, the Grantor shall continue to have the exclusive right to use the Trademarks and the Lenders shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

**5. Negative Pledge.** The Grantor agrees not to sell, assign or further encumber its rights and interest in the Trademarks without prior written consent of the Lenders.

**6. Remedies Upon Default.** (a) If an Event of Default occurs and is continuing, the Grantor hereby covenants and agrees that the Lenders, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in Virginia, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks.

(b) For such purposes, if an Event of Default occurs and is continuing, the Grantor hereby authorizes and empowers the Lenders to make, constitute and appoint any officer or agent of the Lenders as the Lenders may select, in their exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, papers and instruments necessary for the Lenders to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Lenders to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Rider and the Loan Documents, and until all the Obligations are satisfied in full.

(c) The Grantor expressly acknowledges that this Rider shall be recorded with the United States Patent and Trademark Office. Contemporaneously herewith, the Grantor shall also execute and deliver to the Lenders such documents as the Lenders shall reasonably request to permanently assign all rights in the Trademarks to the Lenders, which documents shall be held by the Lenders until the occurrence of an Event of Default. After such occurrence, the Lenders may, at their sole option, record such escrowed documents with the United States Patent and Trademark Office and exercise all other remedies available to a secured creditor with respect to the Trademarks.

**8. Subject to Security Agreement.** This Rider shall be subject to the terms, provisions, and conditions set forth in the Security Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

**9. Inconsistent with Security Agreement.** All rights and remedies herein granted to the Lenders shall be in addition to any rights and remedies granted to the Lenders under the Loan Documents. In the event of an inconsistency between this Rider and the Security Agreement, the language of the Security Agreement shall control. The terms and conditions of the Security Agreement are hereby incorporated herein by reference.

**10. Termination of Agreement.** Upon payment and performance of all Obligations, the Lenders shall promptly execute and deliver to the Grantor all documents and take any and all actions necessary to terminate the Lender's security interest in the Trademarks.

**11. Fees and Expenses.** Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Lenders in connection with the preparation of this Rider and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Rider, shall be borne and paid by the Grantor on demand by the Lenders and until so paid shall be added to the principal amount of the Obligations to the Lenders and shall bear interest at the contract rate therefor.

**12. Prosecution of Trademark Applications.** (a) The Grantor shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Rider or thereafter, until the Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of the Lenders, the Grantor shall make federal application on registrable but unregistered trademarks belonging to the Grantor. Any reasonable expenses incurred in connection with such applications shall be borne by the Grantor. Unless the Grantor discontinues the sale of the goods offered in connection with a Trademark, the Grantor shall not abandon any Trademark without the written consent of the Lenders. Notwithstanding the foregoing, the Grantor shall not be required to take any action with respect to any Trademark that the Grantor, in its reasonable judgment determines is not in the best interest of Grantor and the Lenders. Grantor shall give the Lenders prior notice of any

decision that will result in abandonment of a Trademark, or a registration of a Trademark or an application to register a trademark prior to such abandonment.

(b) The Grantor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Lenders may, if the Grantor deems it necessary or after an Event of Default or potential Event of Default, be joined as a nominal party to such suit if the Lenders shall have been satisfied that they are not thereby incurring any risk of liability because of such joinder. The Grantor shall promptly, upon demand, reimburse and indemnify the Lenders for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by the Lenders in the fulfillment of the provisions of this paragraph.

**13. Additional Remedies.** Upon the occurrence of an Event of Default, the Lenders may, without any obligation to do so, complete any obligation of the Grantor hereunder, in the Grantor's name or in the Lenders' name, but at the Grantor's expense, and the Grantor hereby agrees to reimburse the Lenders in full for all reasonable expenses, including reasonable attorney's fees, incurred by the Lenders in protecting, defending and maintaining the Trademarks.

**14. Governing Law. THIS RIDER WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, EXCLUDING ITS CONFLICT OF LAW RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.**

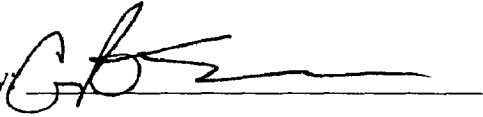
**15. Counterparts.** This Rider may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**WITNESS** the due execution of this Rider to Security Agreement - Trademarks as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

WITNESS:

**ECUTEL, INC.**

By: 

By:  (SEAL)

Print Name: Constance R. Sisk

Print Name: Eric J. Gibson

Title: \_\_\_\_\_

Title: VP & CFO

**MCDONNELL & ASSOCIATES, L.P.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MCDONNELL CHARITABLE  
FOUNDATION**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
**Jürgen Manchot**

ACKNOWLEDGMENT

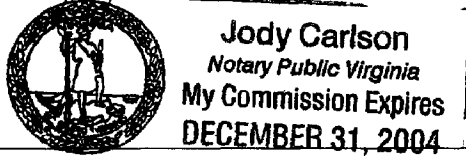
STATE OF VIRGINIA     )  
  )  
COUNTY OF FAIRFAX    )     ss:

On this, the 10th day of October, 2002 before me a Notary Public, the undersigned officer, personally appeared Eric Gibson, who acknowledged himself to be the Chief Financial Officer of Ecutel, Inc., a Delaware corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Jody Carlson*  
\_\_\_\_\_  
Notary Public

My commission expires:

  
\_\_\_\_\_  
Print Name



**WITNESS** the due execution of this Rider to Security Agreement - Trademarks as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

WITNESS:

**ECUTEL, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

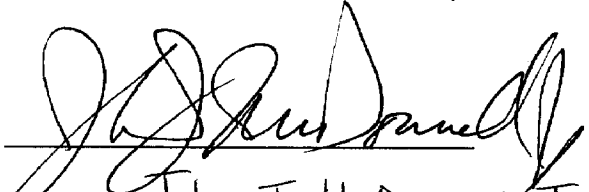
Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

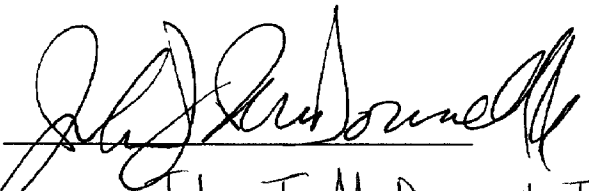
**MCDONNELL & ASSOCIATES, L.P.**

By:  \_\_\_\_\_

Print Name: John J. McDonnell Jr

Title: President, McDonnell Holdings Inc, its  
General Partner

**MCDONNELL CHARITABLE  
FOUNDATION**

By:  \_\_\_\_\_

Print Name: John J. McDonnell Jr

Title: President

\_\_\_\_\_  
**Jürgen Manchot**

**WITNESS** the due execution of this Rider to Security Agreement - Trademarks as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

**WITNESS:**

**ECUTEL, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**MCDONNELL & ASSOCIATES, L.P.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_


Title: \_\_\_\_\_

**MCDONNELL CHARITABLE  
FOUNDATION**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
\_\_\_\_\_  
Jürgen Manchot

**SCHEDULE A TO RIDER TO SECURITY AGREEMENT - TRADEMARKS**

<b><u>TRADEMARK</u></b>	<b><u>APPLICATION OR REGISTRATION NO.</u></b>	<b><u>COUNTRY</u></b>	<b><u>REGISTRATION OR FILING DATE</u></b>
ECUTEL	Reg. No. 2591098	USA	filed on Feb. 13, 2001 registered on April 16, 2002
VIATORES	Reg. No. 2620245	USA	filed Feb. 13, 2001 registered on Sept. 17, 2002
VIATORES	Application No. 75/472270	USA	filed April 22, 1998

## TRADEMARK ASSIGNMENT

**WHEREAS, Ecutel, Inc.** (the “**Grantor**”) is the owner of the entire right, title and interest in and to the United States trademarks, tradenames and registrations listed on Schedule A attached hereto and made a part hereof, and all rights associated therewith (together with any hereafter acquired marks or names, the “**Trademarks**”), which are registered in the United States Patent and Trademark Office or, which are the subject of pending applications in the United States Patent and Trademark Office;

**WHEREAS, McDonnell & Associates, L.P.**, a Virginia limited partnership, **McDonnell Charitable Foundation**, and **Jürgen Manchot**, identified as the “**Lenders**” under that certain Rider to Security Agreement - Trademarks (the “**Rider**”) of even date herewith (the “**Grantees**”) are desirous of acquiring or transferring to their designee said Trademarks;

**WHEREAS**, the Grantees have a security interest in the assets of the Grantor; and

**WHEREAS**, the Rider provides that this Assignment shall become effective upon the occurrence of an Event of Default (as defined in the Security Agreement, as amended, by and between the Grantor and the Grantees).

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Grantor, its successors and assigns, does hereby collaterally transfer, assign and set over unto Grantees, their successors, transferees and assigns, all of its present and future right,. title and interest in and to the Trademarks, the goodwill of the business associated with such Trademarks and all proceeds thereof and all rights and proceeds associated therewith.

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IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed by its duly authorized officer on this 10<sup>th</sup> day of October, 2002.

WITNESS:

By: Constance E. Sisk

ECUTEL, INC.

By: Eric J. Giben (SEAL)

Print Name: Constance E. Sisk

Print Name: Eric J. Giben

Title: \_\_\_\_\_

Title: VP / CFO

I hereby certify on behalf of the Lenders, that (i) an Event of Default (as defined in the aforementioned Security Agreement, as amended) has occurred, and (ii) the Lenders have elected to take or transfer to their designee possession of the Trademarks and is recording this Assignment in the United States Patent and Trademark Office.

**MCDONNELL & ASSOCIATES, L.P.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

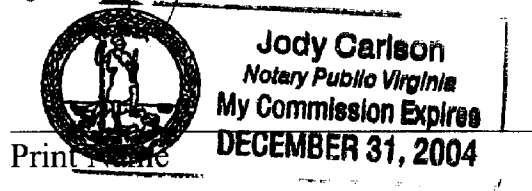
STATE OF VIRGINIA     )  
                                  )  
COUNTY OF FAIRFAX    )     ss:

On this, the 10<sup>th</sup> day of October, 2002 before me a Notary Public, the undersigned officer, personally appeared Eric Gibson, who acknowledged himself to be the Chief Financial Officer of Ecutel, Inc., a Delaware corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Jody Carlson*  
\_\_\_\_\_  
Notary Public

My commission expires:



# BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale, Assignment and Assumption Agreement (this "Agreement") dated this 10th day of October 2002 is entered into between Ecutel PCS, LLC, a Virginia limited liability company in dissolution ("Assignor"), and Ecutel, Inc., a Delaware corporation ("Assignee").

## Introduction

A. Ecutel PCS, LLC was formed in Tennessee as a Tennessee limited liability company in November 1996.

B. Ecutel Acquisition LLC was formed in Virginia on June 4, 1998 as a Virginia limited liability company.

C. Ecutel PCS, LLC, a Tennessee limited liability company, and Ecutel Acquisition, LLC, a Virginia limited liability company, were merged, with Ecutel Acquisition, LLC surviving in Virginia and adopting the name Ecutel PCS, LLC on June 24, 1998.

D. Ecutel, Inc. was incorporated in Delaware on August 13, 1999.

E. In October 1999, each member of Ecutel PCS, LLC, a Virginia limited liability company, exchanged such members' outstanding equity interest in Ecutel PCS, LLC, a Virginia limited liability company, for common stock of Ecutel, Inc. It was the stated intention of Ecutel PCS, LLC and Ecutel, Inc. that Ecutel PCS, LLC would be merged with and into Ecutel, Inc., but for reasons unknown this merger was never filed of record.

F. Effective December 31, 1999 Ecutel PCS, LLC's certificate of organization was automatically cancelled for failure to pay fees. Under Section 13.1-1064 (D) of the Virginia Limited Liability Company Act a limited liability company's certificate of organization cannot be reinstated more than two years after cancellation.

G. Under Section 13.1-1046 of the Virginia Limited Liability Company Act, a limited liability company whose certificate of organization is automatically cancelled for failure to pay fees is deemed to be dissolved.

H. Under Section 13.1-1048 of the Virginia Limited Liability Company Act and Section 7.3(c) of the Ecutel PCS, LLC Operating Agreement, the members of a dissolved limited liability company have the authority to wind up the limited liability company's affairs.

I. Ecutel, Inc., as the sole member of Ecutel PCS, LLC, a Virginia limited liability company in dissolution, desires to confirm that all of the assets of Ecutel PCS,

LLC, a Virginia limited liability company, have been transferred to Ecutel, Inc. and that all of the liabilities of Ecutel PCS, LLC, a Virginia limited liability company, have been assumed by Ecutel, Inc.

J. Ecutel PCS, LLC has in some instances, incorrectly, been referred to as Ecutel, LLC. All references to Ecutel, LLC are, in fact, references to Ecutel PCS, LLC.

Now, therefore, for value received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are hereby incorporated by reference.
2. Assignor does hereby grant, sell, convey, transfer, assign and deliver to Assignee, its successors and assigns, to and for their own use and benefit forever, to have and to hold all of the right, title and interest of Assignor in and to all of its assets (the "Assets").
3. Assignee accepts the foregoing and assumes the prompt and complete performance of all obligations of Assignor, including those with respect to the assigned Assets (collectively, the "Obligations"), and assumes the full and faithful observance and performance of each and every term, covenant and condition of such Obligations on the part of Assignor thereunder to be observed or performed.
4. Assignor, upon the request of Assignee, shall execute and deliver such documents and instruments of conveyance and transfer as Assignee may reasonably request in order to consummate more effectively the transfer of Assets as contemplated hereby and to vest in Assignee title to the Assets transferred hereunder, and Assignee, upon the request of Assignor, shall execute and deliver such documents and instruments of contract or lease assumption as Assignor may reasonably request in order to confirm Assignee's liability for the Obligations assumed hereunder or to otherwise more fully consummate the transactions contemplated by this Agreement.
5. The assignment, transfer, acceptance, covenants and assumptions contained herein shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
6. Assignor and Assignee represent and warrant to each other that each has full and lawful authority to enter into this Agreement and to perform all obligations required to be performed by each other under this Agreement.
7. This Agreement may not be changed, modified, discharged or terminated orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors and assigns.



8. This Agreement shall be governed by the laws of the Commonwealth of Virginia (regardless of the laws that might otherwise govern under applicable Virginia principles of conflicts of law).

In Witness Whereof, the parties have executed this Bill of Sale, Assignment and Assumption Agreement as of the day and year above written.

Assignor

Ecutel PCS, LLC

By:  \_\_\_\_\_

Assignee

Ecutel, Inc.

By:  \_\_\_\_\_