

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Switch Sticks, LTD		01/18/2012	LIMITED LIABILITY COMPANY: UNITED KINGDOM
RECEIVING PARTY DATA			
Name:	DMS Holdings, Inc.		
Street Address:	7300 Westown Parkway		
City:	West Des Moines		
State/Country:	IOWA		
Postal Code:	50266		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Serial Number:	85452595	S.	
Registration Number:	3961002	SWITCH STICKS	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	515-246-431		
Email:	trademark@dickinsonlaw.com		
Correspondent Name:	Janet E. Phipps Burkhead		
Address Line 1:	699 Walnut St., Suite 1600		
Address Line 4:	Des Moines, IOWA 50309		
NAME OF SUBMITTER:	Janet E. Phipps Burkhead		
Signature:	/Janet E. Phipps Burkhead/		
Date:	04/17/2012		

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Total Attachments: 22

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ASSET PURCHASE AGREEMENT

~~THIS ASSET PURCHASE AGREEMENT is made as of this 18th day of January 2012,~~
by and between DMS Holdings, Inc., a subsidiary of Briggs Medical Service Company, d/b/a
Briggs Healthcare, a Delaware corporation (“**Buyer**”) and Switch Sticks, Ltd., a United
Kingdom company (company number 05485956), Switch Sticks, Inc., a Delaware corporation,
and Switch Sticks Pty, Ltd., an Australian company (collectively, “**Seller**”).

Introduction

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain of the assets, rights and properties referred to below as the “Purchased Assets related to Seller’s business (the “**Business**”), on the terms and conditions set forth in this Agreement (the “**Transactions**”).

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

ARTICLE I DEFINITIONS; USAGE

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

1.1 “**Agreement**” shall mean this Asset Purchase Agreement, together with the Schedules and Exhibits hereto

1.2 “**Assignment and Assumption Agreement**” shall mean the Assignment and Assumption Agreement in the form of **Exhibit 1** hereto.

1.3 “**Bill of Sale**” shall mean the Bill of Sale in the form of **Exhibit 2** hereto.

1.4 “**Business**” shall mean the operations related to the Products, including acquiring, producing, packaging and selling the Products.

1.5 “**Buyer**” shall mean DMS Holdings Inc, a Delaware corporation.

1.6 “**Closing**” shall mean the conference held simultaneously with the execution of this Agreement at such time and place as the parties shall mutually agree, at which the transactions contemplated by this Agreement shall be consummated.

1.07 “**Closing Date**” shall mean January 18, 2012, or such other date agreed to by Seller and Buyer in writing on which the Closing shall be held.

1.08 “**Contracts**” shall mean those contracts of Seller, including open purchase orders with suppliers, that Seller is assigning and Buyer is assuming which are listed and described on ~~Schedule 1.08~~ hereto.

1.09 “**Damages**” shall have the meaning set forth in Section 7.1 (a) hereof.

1.10 “**Effective Time of Closing**” shall mean 12:01 a.m. Chicago Time on the Closing Date.

1.11 “**Equipment**” shall mean those items listed on **Schedule 1.11** attached to this Agreement.

1.12 “**Financial Information**” shall mean: (a) a Profit and Loss Statement of Seller related to the Business for the company financial years from 2009 to 2011 and an interim Profit and Loss Statement of Seller related to the Business for the period ending November 30, 2011, once it is available, each prepared without audit but using an accounting method that is generally accepted under accounting principles in the jurisdiction of incorporation of each of the Sellers territories applied on a consistent basis throughout the periods covered thereby and (b) Seller’s customer lists, books and Records relating solely to the Business and all other financial information relating to the financial condition of the Business, to be delivered by Seller to Buyer pursuant to the terms of this Agreement. Financial Information for Switch Sticks, Inc. will be available only from the time it began conducting business.

1.13 “**Intangible Assets**” shall mean the intangible assets owned or used by Seller in the Business that are listed or referred to in **Schedule 1.13** and **Schedule 3.9** attached to this Agreement, including but not limited to any of the following: the name “Switch Sticks”, trade secrets, know-how, operating methods and procedures, proprietary information, processes, technical knowledge, advertising formats, artwork, designs, packaging, logos, trademarks, trade names, domain names and website content, copyrights, applications for any of the foregoing, goodwill, advertising and promotional rights, customer lists, telephone number(s), product catalog relating solely to the Business and related rights.

1.14 “**Inventory**” shall mean all of Seller’s inventories of raw materials, finished goods owned or used in the Business, whether or not located on the premises of Seller or in transit and packaging materials related thereto, all as set forth on **Schedule 1.14** hereto.

1.15 “**Knowledge**” or “**Knowledge of Seller**” shall mean actual knowledge of Seller, or its officers, directors or senior managers after such investigation (if any) as is reasonable in the Seller’s circumstances.

1.16 "Law" shall mean any applicable federal, state, foreign, local or other law, ordinance, rule, regulation, or governmental requirement or restriction of any kind, including any rules, regulations, and orders promulgated thereunder, and any final orders, decrees, consents, or judgments of any regulatory agency or court.

~~1.17 "Liability" shall mean with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.~~

1.18 "Encumbrance" shall mean with respect to any asset: any mortgage, pledge, lien, charge, claim, restriction, reservation, condition, easement, covenant, lease, encroachment, title defect, imposition, security interest, inchoate lien, or other encumbrance of any kind and the interest of a vendor or lessor under any conditional sale agreement, financing lease or other title retention agreement related to such asset.

1.19 "Miscellaneous Assets" shall mean those assets (if any) described on **Schedule 1.19** hereto.

1.20 "Ordinary Course of Business" shall mean ordinary course of business consistent with past custom and practice.

1.21 "Permits" shall mean those permits, licenses, approvals, registrations, filings, notices, and governmental authorizations required for the conduct of the Business as presently conducted, listed and briefly described on **Schedule 1.21** hereto.

1.22 "Person" shall mean an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

1.23 "Proceeding" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any governmental body or arbitrator.

1.24 "Product Liability Matters" shall mean product recalls, and liabilities or obligations or damages of any kind for death, disease, or injury to persons, business, or property relating to products designed, manufactured, distributed, marketed, sold or shipped in connection with the Business including those that are referred to on **Schedule 3.18** hereto.

1.25 "Products" shall mean any and all merchandise owned or created by Seller and all licenses related to the such merchandise, including those items identified on **Schedule 1.25**

1.26 **"Purchase Price"** shall mean Three Hundred and Twenty-Four Thousand US Dollars (US\$324,000.00) plus the Value of the Inventory plus the Value of the Trade Accounts Receivable (in each case, excluding VAT). plus the value of prepayments for stock and other items as shown on **Schedule 1.08**.

1.27 **"Purchased Assets"** shall mean the Contracts, Equipment, Intangible Assets, Inventory, Miscellaneous Assets, Permits, Products, Trade Accounts Receivable and Records

1.28 **"Records"** shall mean such books, documents and records owned or used by Seller in the conduct of the Business, including accounting records, correspondence, governmentally required records, VAT Records and returns, manuals, designs, drawings, plans, specifications, lists, customer lists, computer media and data, website content, software documentation, sales literature, catalogues, promotional items, advertising materials, and other written materials, as referred to on **Schedule 1.28** hereto.

1.29 **"Retained Assets"** shall mean all of the assets of Seller other than those assets purchased by Buyer under this Agreement including but not limited to : (a) Seller's assets not used in the Business set forth on **Schedule 1.29** attached to this Agreement; (b) Seller's franchise to be a corporation, articles of incorporation, bylaws, minute books, stock books, corporate seals and other corporate records having to do with the corporate organization and capitalization of Seller; (c) all canceled checks, bank statements and tax returns (other than the VAT Records and returns) of Seller relating to the Business; (d) any contract, agreement or lease of Seller which is not assumed by Buyer hereunder; (e) Seller's insurance policies; (f) Seller's cash and cash equivalents; (g) all accounts receivable that are 120 or more days past due as of the Closing Date; and (h) rights relating to deposits and prepaid expenses and claims for refunds and rights to offset including all claims for refund of Taxes and other governmental charges of whatever nature.

1.30 **"Retained Liabilities"** shall mean all obligations and liabilities of Seller including:

- (i) any Liability arising directly out of or relating directly to Products of Seller sold prior to the Effective Time of Closing;
- (ii) any Liability under any Contract assumed by Buyer due to any breach that occurred prior to the Effective Time of Closing;
- (iii) any Liability for Taxes, including (A) any Taxes arising as a direct result of Seller's operation of its business or ownership of the Purchased Assets and solely in relation to the period prior to the Effective Time of Closing, (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement and (C) any deferred Taxes of any nature;

- (iv) save in relation to Victoria Mitchell after Closing Date any Liability under any employee benefit or welfare plans or relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both;

- (v) save in relation to Victoria Mitchell after Closing Date any Liability under any employment, severance, retention or termination agreement with any employee of Seller, including any Liability of the Buyer to any employee or former employee of Seller arising after the Effective Time of Closing where such liability arises out of or otherwise relates to the Contemplated Transactions;

- (vi) any Liability arising out of any Proceeding commenced and served prior to the Effective Time of Closing;
- (vii) any Liability arising out of any Proceeding commenced by a third party after the Effective Time of Closing relating to the Purchased Assets and arising out of any occurrence or event happening prior to the Effective Time of Closing or, in the case of any Proceeding brought by any employee or former employee of the Seller, arising after the Effective Time of Closing where such Proceeding arises out of or otherwise relates to the Contemplated Transactions;

1.31 “**Seller**” shall mean the entities identified as Sellers in the first sentence of this Agreement either jointly or severally as the context requires.

1.32 “**Subsidiary**” shall mean with respect to any specified Person any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by or the management is otherwise controlled by such Person (irrespective of whether, at the time, capital stock or other ownership interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency), and collectively shall be referred to as the “Subsidiaries.” Unless otherwise qualified references to “Subsidiary” or “Subsidiaries” herein shall refer to the direct or indirect Subsidiaries of Seller.

1.33 “**Taxes**” shall include ad valorem, sales, value-added, use, excise, franchise, income, real property and personal property taxes imposed by any national, federal, state, provincial or local government.

1.34 "Trade Accounts Receivable" shall mean those accounts receivable listed on Schedule 1.34 and updated as of the Closing Date.

1.35 "Value of the Inventory" means the stated value of the raw materials and finished goods Inventory related to the Business as determined by a physical count or perpetual inventory records, which will be observed and tested by representatives of Buyer. Representatives of Buyer will be given copies of all count sheets or tags or perpetual inventory records on the day of the physical inventory and no adjustments to the physical counts or perpetual records will be permitted by Seller once the copies are given to Buyer's representatives save in respect of sales made between the physical inventory and the Effective Time of Closing. The stated value for the finished goods Inventories will be determined as follows: finished goods at 2011 standard cost, but not to exceed the average selling price for the last twelve months for each item, less the average gross margin percentage for the last twelve months for each item. Quantities of items in excess of the last twelve months' historical sales or usage will only be included in computation of the stated value at 75% of the 2011 standard cost, provided however this limitation will not apply to new items added to the product portfolio in the last twelve months (or planned to be added in the future). Items that are damaged or obsolete or are otherwise not expected to be saleable at regular prices as determined by the Buyer will not be included in computation of the stated value.

1.36 "Value of the Trade Accounts Receivable" means the trade accounts receivable and other rights to payment from customers of Seller prior to the closing, related to the Business and any claim, remedy or other right related thereto, valued according to the following table:

Past Due Status	Percentage of Amount Due to be used to determine value (net of discounts and allowances)
0 to 120 days	100%
More than 120 days	0% (Seller may collect in its sole discretion and for its sole benefit)

1.37 "VAT" shall mean value-added tax. (and shall include where the context requires Australian General Sales Tax ("GST"))

1.38 "VAT Records" means all records referred to in Section 49 of the Value Added Tax Act 1994 (made under the laws of England and Wales) . (and shall include where the context requires Australian BAS Records)

1.39 "Warranties" means the warranties and representations contained in Article III and the Schedules to this Agreement

1.40 "Warranty Claims" means any claim made by the Buyer for breach of any of the Warranties, but does not include claims made by the Buyer or by third parties for Retained Liabilities as defined in Clause 1.30.

**ARTICLE II
PURCHASE AND SALE OF PURCHASED ASSETS;
OTHER AGREEMENTS**

2.1 **Purchase and Sale.** Subject as set out elsewhere in this Agreement Seller hereby ~~sells, assigns, conveys, and delivers to Buyer, and Buyer hereby purchases and accepts from Seller as a going concern, the Purchased Assets but not the Retained Assets or the Retained Liabilities.~~ Buyer is not assuming any liabilities or obligations of Seller, other than under the Contracts, and Seller shall satisfy all of the Retained Liabilities..

2.2 **Payment of Purchase Price.** Eighty five percent (85%) of the Purchase Price shall be paid in full and without deduction to Seller at Closing by wire transfer of funds in accordance with Seller's wire transfer instructions provided to Buyer. The remaining fifteen percent (15%) of the Purchase Price shall after one hundred and twenty (120) days be applied first against any unpaid Trade Accounts Receivable acquired by Buyer and the balance, if any, shall then be paid to Seller.

2.3 **Noncompetition; Confidentiality.**

- (a) Subject to the Closing, and as an inducement to Buyer to execute this Agreement and complete the transactions contemplated hereby, and in order to preserve the goodwill associated with the Business being acquired pursuant to this Agreement, Seller and its Subsidiaries hereby covenant and agree that for a period of two (2) years from and after the Closing Date, they will not, directly or indirectly:
- (i) engage in the business of distributing for sale the Products or any other walking sticks or canes similar to those sold or developed as part of the Business either on its or their own behalf or as an officer, director, employee, stockholder, partner, consultant, associate, executive, manager, member, owner, agent, creditor, independent contractor or co-venturer of any third party except pursuant to a distribution agreement between Seller and Buyer; or
 - (ii) consult with, advise or assist in any way, whether or not for consideration, any corporation, limited liability company, partnership, firm or other business organization which is now or becomes a competitor of Buyer with respect to the Business including, but not limited, to, advertising or otherwise endorsing the products or services with respect to the Business of any such competitor; soliciting customers with respect to the Business or otherwise serving as an intermediary for any such competitor with respect to the Business; loaning money or rendering any other form of financial assistance to or engaging in any similar form of business transaction with any such competitor with respect to the Business

the parties intend that each of the foregoing noncompete covenant shall be construed as separate covenants, one for each country, state, county and subdivision to which the covenant applies. The parties agree further that Buyer may sell, assign or otherwise transfer this covenant not to compete, in whole or in part, to any person, corporation, limited liability company, ~~firm or entity that purchases all or part of the Business or the Purchased Assets~~ being acquired by Buyer hereunder. In the event a court of competent jurisdiction determines that the provisions of this covenant not to compete are excessively broad as to duration, geographic scope or activity, it is expressly agreed that this covenant not to compete shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such over broad provisions shall be deemed, without further action on the part of any person, to be modified, amended or limited, but only to the extent necessary to render the same valid and enforceable in such jurisdiction.

- (b) Each Seller, on behalf of itself and its Subsidiaries, acknowledges that: (i) the Business customers, customer lists, marketing, production, sales techniques, procedures, operations of the Business, and the other Intangible Assets and aspects of the Business which are to be acquired by Buyer hereunder are of value to Buyer; and (ii) Buyer would suffer loss and injury if Seller would disclose this information or use it in any way. Therefore, Seller shall not, directly or indirectly, use or disclose, or cause or allow to be used or disclosed, any secret, confidential, or proprietary information solely relating to the Business.
- (c) Seller agrees that any breach or threatened breach by any of them of this Section 2.3 shall entitle Buyer, in addition to all other legal remedies available to them, to seek a temporary or permanent injunction to enjoin such breach or threatened breach.
- (d) Notwithstanding the foregoing provisions of this Section 2.3, the provisions of this Section 2.3 shall become automatically void and unenforceable if Buyer or a transferee of the benefit of this Section 2.3 should, for any reason, cease doing business, become insolvent or dissolve (save in the case of Buyer to the extent has transferred the benefit of this Section 2.3 prior to such cessation, insolvency or dissolution).

2.4 **Access to Records.** Seller shall permit Buyer, and its attorneys, accountants, agents and designees, such access to, and right to copy, all books, papers and records of Seller relating to the Business which are not a part of the Purchased Assets, from and after the Closing Date hereof as Buyer may reasonably require. Any such examination shall be at the expense of Buyer, shall be performed during normal business hours at the place where such records are maintained by Seller and shall not unreasonably interfere with the normal business activities of Seller.

2.6 (a) **VAT.** The Seller and the Buyer intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the sale of the Business under this Agreement and agree to use all reasonable endeavors to secure that the sale is treated as neither a supply of goods nor a supply of services under that article. If, nevertheless, any VAT is payable on the sale of the Purchased Assets under this agreement and HM Revenue & Customs have so confirmed in writing after full disclosure of all material facts, the Seller shall promptly deliver to the Buyer a proper VAT invoice in respect of the VAT immediately on recovery of that VAT by the Buyer from HM Revenue & Customs; or payment of the VAT by the Seller, whichever is the later.

b) The Buyer is liable for any taxes that arise as a result of the sale of the Assets pursuant to this Agreement in Australia on the understanding that it is the sale of a ongoing business and therefore not subject to GST. If it is deemed at a future date that GST is payable then the Buyer will reimburse the Seller for the GST to the sum of 10% of the purchase price which the Buyer can then claim back from the ATO. It is the understanding and intention of this agreement that the Purchase Price is net of GST.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

All information, qualification and disclosures ("Disclosures") that are contained or referred to in the schedules to this Agreement are intended to apply to all relevant sections of this Agreement, regardless of the schedule or section in which that Disclosure is contained.

As applicable, each of Switch Sticks, Ltd., Switch Sticks, Inc., and Switch Sticks Pty, Ltd., severally represents and warrants to Buyer that to the extent of their respective Knowledge as follows:

3.1 Organization; Business. Switch Sticks, Ltd. is a corporation duly and validly organized and existing and in good standing under the Laws of the United Kingdom, Switch Sticks, Inc. is a corporation duly and validly organized and existing and in good standing under the Laws of the State of Delaware, and Switch Sticks Pty, Ltd. is a corporation duly and validly organized and existing and in good standing under the Laws of Australia and has full corporate power to own its assets and to convey the Purchased Assets to Buyer pursuant to this Agreement.

3.2 Authorization; Enforceability. . The execution, delivery, and performance of this Agreement, and all of the documents and instruments required hereby, by it is within its corporate power, has been duly authorized by each Seller's Board of Directors, and has been duly authorized by all necessary corporate actions. To the Seller's Knowledge this Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by all parties, the valid and binding obligations of such Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by

general equitable principles, and sufficient to transfer and convey to Buyer all of each Seller's right, title, and interest in and to the Purchased Assets.

3.3 **No Violation or Conflict.** To the Seller's Knowledge, the execution, delivery and performance of this Agreement and the other documents and instruments to be executed and delivered by each Seller pursuant hereto, and the consummation by each Seller of the transactions contemplated herein or therein:

- (a) will not violate or conflict with any applicable Law;
- (b) will not require any authorization, consent, approval, exemption or other action by or notice to any government entity; and
- (c) will not violate or conflict with any provision of Seller's articles of incorporation, articles of association or bylaws, or constitute a default (or event which, with notice or lapse of time, or both, would constitute a default) under, or will not result in the termination of, or accelerate the performance required by, or result in the creation of any Lien upon any of the Purchased Assets under any term of or provision of a Seller's articles of incorporation or bylaws, or any contract, commitment, understanding, arrangement, or agreement or restriction of any kind or character to which a Seller is a party or by which a Seller or any of the Purchased Assets may be bound or affected.

3.4 **Purchased Assets.**

Except as set forth on **Schedule 3.4 (a)** hereto, Seller owns or has a license to use all of the Purchased Assets. Except as set forth on **Schedule 3.4 (a)** hereto, at the Closing, Seller will transfer good and marketable title to, or in the case of the License, its license to use, all of the Purchased Assets, free and clear of all Encumbrances of any nature whatsoever.

- (a) Except for the off-site Assets described in **Schedule 3.4(a)** attached to this Agreement, Seller is in sole possession of, and has sole control of, the Purchased Assets. **Schedule 3.4(a)** contains a list of all Liens on the Purchased Assets. Except as set forth on **Schedule 3.4 (a)** hereto, none of the Purchased Assets are leased, rented, licensed, or otherwise not owned by Seller.
- (b) The Purchased Assets comprise all of the assets that are necessary for the continuation of the Business as it is carried on at Closing.
- (c) Seller is not in possession of any Inventory not owned by Seller, including goods already sold.
- (d) The Equipment is in reasonable operating condition and repair, normal wear and tear excepted, free from any defects (except minor defects as do not interfere

materially with the use thereof in the conduct of the normal operations of the Business).

- (e) The Inventory is current, merchantable, usable and resalable at normal prices and discounts in the ordinary course of business and complies materially, and will on sale in the ordinary and usual course of the Business comply materially, with all applicable laws, regulations, standards (including British and European Union Standards) and specifications.

3.5 Financial Information.

- (a) The Financial Information is prepared without audit but using an accounting method applied on a consistent basis in respect of the jurisdiction to which it relates throughout the periods covered thereby and presents a reasonable view of the financial condition and the results of operations of the Business as of the relevant dates thereof and for the periods covered thereby.
- (b) Excluding Tax if applicable Seller has no liabilities or indebtedness, contingent, absolute, accrued, or otherwise, in connection with the Business, other than as set forth in the Financial Information or on **Schedule 3.5(b)** hereto.

3.6 Absence of Certain Changes.

- (a) Since delivery of the Financial Information to Buyer, there has not been any: (i) material adverse change in the financial condition, business, results of operations, or prospects of the Business; (ii) damage, destruction, or loss which has materially adversely affected or may materially adversely affect the Business (whether or not covered by insurance); (iii) material commitments or transactions by Seller outside the ordinary course of Business; or (iv) any material grant of credit or price concessions to any customer or distributor on terms or in amounts more favorable than those which have been extended to such customer or distributor in the past, any other material change in the terms of any material credit or price concessions heretofore extended, or any other material change of Seller's policies or practices with respect to the granting of credit or price concessions.
- (b) Seller has no Knowledge of any facts, circumstances, or proposed or contemplated events which would materially adversely affect the operations, results, or prospects of the Business after the Closing Date other than as disclosed in writing in the Schedules to the Agreement.

3.7 Contracts. Except as set forth on **Schedule 3.7** hereto, Seller is not a party to any written or unwritten agreement that is material to the ongoing operations of the Business and that is not otherwise contained on **Schedule 1.08** hereto.

3.8 Performance of Contracts; Business Relationships.

- (a) To the Knowledge of Seller, each party to each Contract, has performed in all material respects each term, covenant, and condition of each Contract which is to be performed by them at or before the date hereof. To the Knowledge of the Seller each of the Contracts is in full force and effect and constitutes the legal and binding obligation of the parties thereto. ~~Except as disclosed on Schedule 1.08,~~ no Contract requires the written consent of, or prior notice to, any third party in order for Seller to assign such contract to Buyer hereunder.
- (b) To the Knowledge of Seller, Seller maintains a reasonable business relationship with each of its customers and suppliers for the Business, and Seller knows of no unresolved complaint or dispute which presently exists, except for those referred to in Schedule 3.8(b).
- (c) Buyer will not be obligated or liable to any of Seller's vendors, suppliers, or other parties who may have or may have had a contractual relationship with Seller as a result of such contractual relationship, unless said relationship arises from a Contract being assigned pursuant to Section 2.1 which are listed in Schedule 1.08

3.9 Intangible Assets.

- (a) **Schedule 1.13** lists or refers elsewhere in the Schedules to Intangible Assets specifying whether such Intangible Assets are owned, used or held (under license or otherwise) by Seller, and also indicating which of such Intangible Assets are registered or for which applications for registration have been filed, but not yet issued, registered or granted. To the Knowledge of Seller, all Intangible Assets shown as registered by Seller in **Schedule 1.13** or elsewhere in the Schedules have been properly registered and all renewal and other fees relating to such registrations are current.
- (b) The Purchased Assets include artwork used in advertising, packaging, and catalogues related to the Copyrights and Marks (collectively referred to as the "**Artwork**").
- (c) Below in this clause 3.9 the term "**Intellectual Property Assets**" means the Intangible Assets and all intellectual property owned or licensed (as licensor or licensee) by Seller in which Seller has a proprietary interest, including:
- (i) Trade names, registered and unregistered trademarks, service marks and applications related to the Business (collectively, "**Marks**");
 - (ii) all inventions and discoveries that may be patentable related to the Business (collectively, "**Patents**");

- (iii) all registered and unregistered copyrights in both published works and unpublished works related to the Business (collectively, "Copyrights");
 - (iv) NOT USED
 - (v) ~~all know-how, trade secrets, confidential or proprietary information, customer lists, technical information, data, process technology, plans, drawings and blue prints related to the Business (collectively, "Trade Secrets").~~
-
- (d) **Schedule 3.9** details the Intellectual Property Assets with all notifications of copyright and marks on each piece of Switch Sticks brochures and marketing material. Seller is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all encumbrances, and has the right to use without payment to a third party (other than for the purposes of continued registration or renewal where applicable) all of the Intellectual Property Assets. The Buyer acknowledges that it has satisfied itself in all respects as to the information shown in Schedule 3.9.
 - (e) **Schedule 3.9** details any written agreements executed by former and current employees of Seller or independent designers of Seller that assign to Seller all rights to any inventions, designs, copyrights, improvements, discoveries or information relating to the business of Seller.
 - (f) NOT USED
 - (g) **Schedule 3.9** contains a complete and accurate list and summary description of all Marks.
 - (i) To the Seller's Knowledge Marks detailed in Schedule 3.9 have been registered as applicable with Commonwealth of Australia Trade Marks Office, Japan Patent Office, and OHIM – Office for Harmonisation in the Internal Market Trade Marks and Designs, and United States Patent and Trademark Office, are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable
 - (ii) No Mark has been or is now involved in any opposition, invalidation or cancellation Proceeding and, to Seller's Knowledge, no such action is threatened with respect to any of the Marks, except for those listed in Schedule 3.9(g)(ii).
 - (iii) To Seller's Knowledge, there is no potentially interfering trademark or trademark application of any other Person.

(iv) To Seller's Knowledge, no Mark is infringed or has been challenged or threatened in any way. None of the Marks used by Seller infringes or is alleged to infringe any trade name, trademark or service mark of any other Person.

(v) To Seller's Knowledge, all products and materials containing a Mark bear the proper UK & AUSTRALIAN registration notice where permitted by law

(h) **Schedule 3.9** contains a complete and accurate list and summary description of all Copyrights.

(i) All of the registered Copyrights are currently in compliance with formal legal requirements, are valid and enforceable,

(ii) No Copyright is infringed or, to Seller's Knowledge, has been challenged or threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any third party. Seller has the rights to use and convey all Copyrights that are a derivative work based upon the work of any other Person.

(i) With respect to each Trade Secret, (i) Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets; and (ii) - Seller has sufficient right to use the Trade Secrets for the purpose of the business of the Seller. The Trade Secrets are not part of the public knowledge and, to Seller's Knowledge, have not been used, divulged or appropriated to any third party to the detriment of Seller. To Seller's Knowledge, no Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

3.10 Violations of Law. To the Seller's Knowledge none of Seller's present or past operation of the Business, the products Seller produced for sale in the Business, or the Purchased Assets violates or conflicts, in any material respect, with any Permits, any Law applicable to the Business or such products, governmental rule or regulation specification, authorization, or requirement, or any decree, judgment, or order binding upon Seller, or similar restriction. To the Knowledge of Seller, no supplier of Seller is the subject of an inspection or inquiry regarding violations or alleged violations of any Law applicable to the Business or such products by any state, federal or local agency.

3.11 Books of Account. The books of account and Records of the Business are correct in all material respects.

3.12 **Disclosure.** To the Knowledge of Seller, Seller has furnished to Buyer complete and accurate copies or originals of all documents or information requested by Buyer to the extent such documents or information exists and is in Seller's possession. To the Knowledge of Seller, no disclosure (including the Schedules hereto) or statement of fact by Seller contained in this Agreement contains any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements herein or therein contained not misleading. To the Knowledge of Seller, the Schedules to this Agreement are complete and accurate in all material respects with respect to the information the Schedules purport to provide.

3.13 **Brokers.** Seller has not incurred, nor will any person or entity be entitled to, any brokers', finders', or similar fee in connection with the transactions contemplated by this Agreement.

3.14 **Taxes.** Seller has paid or has made or will make provision for payment of all Taxes for which Seller is liable with respect to Seller's ownership or operation of the Business prior to the Effective Time of Closing and Seller's sale of the Purchased Assets that could be enforced, by Lien or otherwise, against the Purchased Assets or that could otherwise have a material adverse affect on Buyer after the consummation of the transactions contemplated herein. All returns and reports with respect to Taxes that as of the date of this Agreement are required to be filed by Seller have been duly and timely filed or an appropriate extension thereof has been obtained. Seller has complied in all material respects with all statutory provisions, rules, regulations, orders and directions in relation to the Business concerning VAT, PAYE (Pay-as-you-earn) and National Insurance contributions including the making on time of accurate returns and payments and the proper maintenance and preservation of records, and the Seller has not been given any penalty, notice or warning regarding the same. Seller is not involved in any dispute, and is not the subject of any enquires, with any fiscal authority, whether of the USA, United Kingdom, Australia or elsewhere, concerning any matter likely to affect the Business or any of the Purchased Assets in any way other than routine enquires of a minor nature following the submission of computations and returns.

3.15 **Permits.** To the Seller's Knowledge the Permits constitute all licenses, permits, approvals, qualifications, and governmental specifications, authorizations, or registrations or requirements required by the applicable governmental authorities which Seller currently has in connection with the Purchased Assets or the Business (including the Products) and to the Knowledge of Seller constitute all such licenses, permits, approvals, qualifications, and governmental specifications, authorizations, or registrations, and requirements required by the applicable governmental authorities necessary for Seller's the ownership or use of the Purchased Assets or Seller's conduct of the Business as currently conducted by Seller.

3.16 **Litigation; Legal Proceedings.**

- (a) Except as described on **Schedule 3.16** hereto, to the Seller's Knowledge there is not now, nor since January 1, 2007, has there been, any (i) litigation; (ii) product liability claim; (iii) arbitration; (iv) legal or governmental proceeding; (v)

governmental investigation or inquiry; (vi) governmental citation; or (vii) governmental order or notice of violation pending, or, to the Knowledge of Seller, proposed or threatened against Seller, relating to the Business or any of the Purchased Assets that could reasonably be expected to affect Buyer's ownership of the Purchased assets or operation of the Business following the Closing as presently conducted by Seller. To Seller's Knowledge, there is no basis for any of the items described in (i) through (vii) relating to the Business or any of the Purchased Assets that could reasonably be expected to affect Buyer's ownership of the Purchased assets or operation of the Business following the Closing as presently conducted by Seller.

- (b) There are no actions, suits or Proceedings pending, or, to the Knowledge of Seller, proposed or threatened, by any person or governmental agency which question the legality, validity, or propriety of the transactions contemplated by this Agreement.
- (c) To the Knowledge of Seller, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any Proceeding that could have a material adverse effect on the Business, Seller's operation of the Business or the Purchased Assets.

3.17 Transactions with Related Parties. Except as set forth on **Schedule 3.17** hereto, in respect of the Business, Seller is not a party to any transaction or proposed transaction, including, without limitation, the leasing of property, the purchase or sale of raw materials or finished goods, the furnishing of services or the borrowing or lending of money with any director or officer of Seller, or any Subsidiary of Seller. Except as set forth on **Schedule 3.17** hereto, no director or officer of Seller, and none of its Subsidiaries, own or has any ownership interest in any Person which is in competition with Seller's Business, except as permitted under Section 2.4 of this Agreement.

3.18 Product Matters.

- (a) All instances of Product Liability Matters involving amounts in excess of \$1,000 that have occurred and for which notice has been received by Seller within the past two (2) years, if any, are listed on **Schedule 3.18** hereto.
- (b) To the Knowledge of Seller, no facts or circumstances exist that would likely cause a material Product Liability Matter to occur prior to or after the Closing Date.

3.19 Insurance.

- (a) Seller has delivered to Buyer accurate and complete copies of all policies of insurance covering the Equipment and the other Purchased Assets (and correspondence relating to

coverage under such policies) to which Seller is a party and any statement by any consultant or risk management advisor with regard to the adequacy of Seller's coverage or of the reserves for claims and the Buyer acknowledges that it has satisfied itself as to the adequacy of all such insurance cover (including without limitation tail product liability insurance intended to insure Buyer against any and all product liability claims related to the Products prior to the Closing Date and further including but not limited to those insurances referred to in Schedule 3.19). Seller purchase tail product liability insurance intended to insure Buyer against any and all product liability claims related to the Products prior to the Closing Date.

(b) NOT USED

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that:

4.1 **Organization.** Buyer is a corporation duly and validly organized and existing and in current status under the laws of the State of Delaware and has full corporate power to own its assets and consummate the transactions contemplated in and pursuant to this Agreement.

4.2 **Authorization; Enforceability.** The execution, delivery, and performance of this Agreement, and all of the documents and instruments required hereby, by Buyer are within the corporate power of Buyer, have been duly authorized by the Board of Directors of Buyer, and have been duly authorized by all necessary corporate action by Buyer. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by general equitable principles.

4.3 **No Violation or Conflict.** The execution, delivery, and performance of this Agreement (and the transactions contemplated herein) by Buyer do not and will not conflict with or violate any applicable Law, judgment, order, decree, the Articles of Incorporation or Bylaws of Buyer, or any contract or agreement to which Buyer is a party or by which Buyer is bound.

4.4 **Brokers.** Buyer has not incurred, nor will any person or entity be entitled to, any brokers, finders, or similar fee in connection with the transactions contemplated by this Agreement.

~~4.5 **Consents; Approvals.** No consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority or agency, whether federal, state or local, is required of Buyer in connection with the execution or delivery by Buyer of this Agreement or the consummation by Buyer of any of the transactions contemplated hereby.~~

4.6 **Licenses; Permits.** Buyer has obtained, or by the Closing will have filed to obtain, all licenses and Permits required for the operation of the Business from and after the Effective Time of Closing.

ARTICLE V DELIVERIES AT THE CLOSING

5.1 **Seller's Deliveries at Closing.** Seller shall deliver to Buyer the following documents, each properly executed and dated as of the Closing Date:

- (a) Bills of Sale properly executed and acceptable to Buyer and its counsel;
- (b) assignments, in form and substance acceptable to Buyer, of the Contracts and Intangible Assets set forth on **Schedule 1.13** hereto;
- (c) certificates and documents of or relating to Seller to reasonably evidence the existence and good standing of Seller;
- (d) all terminations and releases for any security interests encumbering the Purchased Assets;
- (e) such permissions, approvals, determinations, consents and waivers, if any, as may be required by applicable Law, regulatory authorities, the Contracts, the Permits, secured creditors of Seller or from any third party pursuant to any contract to which Seller is a party, in order to consummate the transactions contemplated by this Agreement and to vest in Buyer good and marketable title to the Purchased Assets as contemplated by this Agreement;
- (f) Copies of resolutions of the board of directors of Seller approving this Agreement and the consummation of the transactions contemplated hereby; and

(g) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2.

(h) a compromise agreement in the agreed form duly executed by Ms Victoria Mitchell and the Seller, together with a solicitors' certificate;

(i) An employment contract in the agreed form duly executed by Ms Victoria Mitchell, by which Ms Mitchell shall be employed by Buyer;

(j) a distributorship agreement between DMS Holdings and Chapman Healthcare Pty Ltd in the agreed form, duly executed by Chapman Healthcare Pty Ltd.

5.2 **Buyer's Deliveries at Closing.** Buyer shall have delivered to Seller and the Stockholders the following documents, each properly executed and dated as of the Closing Date:

(a) the Purchase Price in accordance with Section 2.2 of this Agreement;

(b) the Assignment and Assumption Agreement properly executed and acceptable to Seller and its counsel;

(c) certificates and documents of or relating to Buyer to reasonably evidence the existence and good standing of Buyer;

(d) Certificate of the Secretary or Assistant Secretary of Buyer certifying as to the resolutions of Buyer's board of directors approving this Agreement and the consummation of the transactions contemplated hereby; and

(e) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing.

(f) An employment contract in the agreed form duly executed by the Buyer, by which Ms Mitchell shall be employed by Buyer;

(g) A distributorship agreement between the Buyer and Chapman Healthcare Pty Ltd in the agreed form, duly executed by the Buyer.

DMS Holdings Inc

By: Alan D. Yefsky
Name: Alan D. Yefsky
Title: Executive Vice President

Address: 7300 Westown Parkway
West Des Moines, IA 50266
USA

SWITCHSTICKS, INC

SWITCH STICKS, LTD.

By: Vicky Mitchell
Name: VICKY MITCHELL
Title: CEO

SWITCH STICKS PTY, LTD.

By: Vicky Mitchell
Name: VICKY MITCHELL
Title: PRESIDENT

By: Vicky Mitchell
Name: VICKY MITCHELL
Title: DIRECTOR

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3.9

Intellectual Property Assets

- Trade Mark Summary

USA	Reg No 3,961,002. Registered 5/17/11 - Class 18 - Trademark	Serial No. 85452595 - filed in August 2011 - awaiting confirmation of registration. No knowledge as to whether there will be any problems or not. Expect response mid Jan.	
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