

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM415108

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	RELEASE OF SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
THE BANK OF NEW YORK, AS AGENT, as SECURED PARTY		02/26/2008	Corporation: NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Accullink, Inc.		
<b>Street Address:</b>	3225 Cumberland Blvd.		
<b>City:</b>	ATLANTA		
<b>State/Country:</b>	GEORGIA		
<b>Postal Code:</b>	30339		
<b>Entity Type:</b>	Corporation: GEORGIA		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3357554	ATM DIRECT	
<b>Registration Number:</b>	3718994	PAYSECURE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Email:</b>	ipdocket@maynardcooper.com		
<b>Correspondent Name:</b>	Jon E. Holland		
<b>Address Line 1:</b>	655 Gallatin Street		
<b>Address Line 4:</b>	Huntsville, ALABAMA 35801		
<b>NAME OF SUBMITTER:</b>	Jon E. Holland		
<b>SIGNATURE:</b>	/joneholland/		
<b>DATE SIGNED:</b>	02/06/2017		
<b>Total Attachments: 127</b>			
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1 HENNIGAN, BENNETT & DORMAN LLP  
BRUCE BENNETT (Cal. Bar No. 105430)  
2 JAMES O. JOHNSTON (Cal. Bar No. 167330)  
JOSHUA M. MESTER (Cal. Bar No. 194783)  
3 LANCE MILLER (Cal. Bar No. 241905)  
865 South Figueroa Street, Suite 2900  
4 Los Angeles, California 90017  
Fax: (213) 694-1234

5 *Reorganization Counsel for*  
6 *Debtors and Debtors in Possession*

7  
8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 LOS ANGELES DIVISION

11 *In re* ) Case No. 2:07-20027-TD  
)  
12 SOLIDUS NETWORKS, INC., d/b/a ) CHAPTER 11  
PAY BY TOUCH, a/f/k/a PAY BY )  
13 TOUCH SOLUTIONS, a Delaware ) (Jointly Administered)  
Corporation, et al. )

14 *Debtors.* )

) **SUBMISSION OF EXECUTED ASSET PURCHASE**  
) **AGREEMENT FOR THE SALE OF ASSETS**  
) **RELATED TO THE ATM DIRECT BUSINESS TO**  
) **ACCULLINK, LLC**

) **[REDACTED]**

) Hearing

) Date: February 25, 2008  
) Time: 9:30 a.m.  
) Place: 255 East Temple Street  
) Courtroom 1345  
) Los Angeles, CA 90012

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27 The Debtors include the following entities: Solidus Networks, Inc., d/b/a Pay By Touch, a/k/a Pay By Touch Solutions, a/f/k/a BioPay, Pay By  
28 Touch Payment Solutions, LLC, a/f/k/a EPX, a/f/k/a Payment Acquisition Corporation, a/f/k/a InterCept Payment Solutions, LLC, a/f/k/a SPS  
Payments, LLC, a/f/k/a IPS Solutions, LLC, a/f/k/a iPay, a/f/k/a Pay By Touch Solidus Merchant Services, Pay By Touch Processing, Inc.,  
a/f/k/a CSSI Acquisition Corporation, a/f/k/a Card Systems Solutions, Inc., Pay By Touch Check Cashing, Inc., Check Elect, Inc., Seven  
Acquisition Sub, LLC, a/f/k/a Seventh Street Software, Pay by Touch Checking Resources, Inc., Indivos Corporation, a/f/k/a Smart Touch, Inc.,  
a/f./k/a Veristar Corporation, a/f/k/a Indivos Acquisition Corporation, CardSystems Payment Solutions, LLC, Maverick International Services,  
Inc., and ATMD Acquisition Corporation, a/f/k/a ATMD Direct, a/f/k/a ATM Online, Inc.

HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA

1           **PLEASE TAKE NOTICE THAT** Solidus Networks, Inc. (“Solidus”) and its affiliated  
2 debtors and debtors in possession (the “Debtors”) hereby submit the fully executed asset purchase  
3 agreement (the “APA”) between the Debtors and Accullink, LLC (“Accullink”) dated February 22,  
4 2008 for the sale of the Debtors’ assets related to the “ATM Direct” business. A copy of the fully  
5 executed APA is attached hereto as Exhibit A. Attached hereto as Exhibit B is a “blackline” of the  
6 APA reflecting modifications made to the original form of the APA previously attached as Exhibit B  
7 to the Motion For Order (I) Authorizing Sale Of Assets Related To The ATM Direct Business Free  
8 And Clear Of Liens, Claims, And Encumbrances, (II) Authorizing The Assumption And  
9 Assignment Of Certain Executory Contracts And Unexpired Leases In Connection Therewith,  
10 (III) Exempting Such Sale And Assignment From Any Stamp Tax Or Similar Tax And  
11 (IV) Granting Related Relief.

12  
13 Dated: February 24, 2008

HENNIGAN, BENNETT & DORMAN LLP  
865 South Figueroa Street, Suite 2900  
Los Angeles, CA 90017

14  
15  
16 By: /s/ Joshua M. Mester  
17 Bruce Bennett  
18 James O. Johnston  
19 Joshua M. Mester  
20 Lance Miller

*Reorganization Counsel for  
Debtors and Debtors in Possession*

HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA

# **EXHIBIT A**

**ASSET SALE AND PURCHASE AGREEMENT**

**BETWEEN**

**SOLIDUS NETWORKS, INC.,**

**AS SELLER,**

**AND**

**ACCULLINK, LLC**

**Dated as of February 22, 2008**



**TABLE OF CONTENTS**

	<b>PAGE</b>
1. CONVEYANCE OF THE ACQUIRED ASSETS .....	1
1.1 Acquired Assets Transaction .....	1
2. ASSUMPTION OF LIABILITIES .....	3
2.1 Assumed Liabilities .....	3
2.2 No Expansion of Third Party Rights.....	4
2.3 Retained Liabilities .....	4
2.4 Contract Designation .....	4
3. PERSONNEL MATTERS; TRANSFERRED EMPLOYEES .....	4
3.1 Business Employees .....	4
3.2 Cooperation.....	5
3.3 No Third Party Rights.....	5
4. PURCHASE PRICE .....	5
4.1 Purchase Price; Deposit Amount .....	5
4.2 Allocation of Purchase Price.....	5
5. REPRESENTATIONS AND WARRANTIES .....	6
5.1 Representations and Warranties of Seller .....	6
5.2 Representations and Warranties of Purchaser.....	9
5.3 Survival of Representations, Warranties and Covenants of Seller and Purchaser .....	11
6. CONDITIONS TO CLOSING .....	11
6.1 Conditions to Obligations of Seller and Purchaser .....	11
6.2 Conditions to Obligations of Purchaser .....	11
6.3 Conditions to Obligations of Seller.....	12
7. CLOSING.....	12
7.1 The Closing.....	12
7.2 Ancillary Agreements .....	12
7.3 Seller’s Deliveries.....	13
7.4 Purchaser’s Deliveries .....	13
8. CERTAIN ADDITIONAL COVENANTS .....	13
8.1 Bankruptcy Actions .....	13
8.2 Registrations, Filings and Consents; Further Actions.....	14
8.3 Operation of the Business Pending Closing.....	14
8.4 Assumed Contracts; Cure Amounts.....	14
8.5 Post-Closing Covenants .....	14
8.6 Certain Transactions .....	16
8.7 Communications with Customers and Suppliers .....	16
8.8 Cooperation.....	16
8.9 Removal of Assets .....	16
8.10 Consents; Failure to Obtain Consents.....	16

**TABLE OF CONTENTS**  
(CONTINUED)

	<b>PAGE</b>
9. TERMINATION .....	17
9.1 Termination.....	17
9.2 Notice of Termination.....	17
9.3 Procedure and Effect of Termination.....	18
10. OTHER TAX MATTERS .....	18
10.1 Tax Returns for Pre-Closing Period.....	18
10.2 Tax Returns for Post-Closing Period .....	18
10.3 Straddle Period.....	18
10.4 Cooperation.....	19
10.5 Tax Elections .....	19
11. MISCELLANEOUS.....	19
11.1 Bulk Sales Laws.....	19
11.2 Notices .....	19
11.3 Assignment .....	20
11.4 Entire Agreement.....	20
11.5 Waiver.....	20
11.6 Severability .....	20
11.7 Amendment.....	20
11.8 Expenses .....	20
11.9 Third Parties.....	20
11.10 Headings .....	21
11.11 Counterparts.....	21
11.12 Governing Law .....	21
11.13 Public Announcements .....	21
11.14 Sales or Transfer Taxes.....	21
11.15 Venue and Retention of Jurisdiction.....	21
11.16 Risk of Loss .....	21
11.17 Enforcement of Agreement.....	21
11.18 Dispute Resolution.....	21
11.19 No Right of Setoff.....	22
11.20 Limitation on Damages.....	22

## ASSET SALE AND PURCHASE AGREEMENT

**THIS ASSET SALE AND PURCHASE AGREEMENT** (this “*Agreement*”) dated as of February 22, 2008, is entered into by and between (i) **ACCULLINK, LLC**, a Delaware limited liability company (“*Purchaser*”), and (ii) **SOLIDUS NETWORKS, INC.**, a Delaware corporation, dba Pay By Touch, aka Pay By Touch Solutions (“*Seller*”). Certain capitalized terms in this Agreement are defined on Schedule A.

### RECITALS

- A.** Seller is engaged in the Business.
- B.** On October 31, 2007, an involuntary chapter 11 bankruptcy petition was commenced against Seller in the United States Bankruptcy Court for the Central District of California, Los Angeles Division, (the “*Bankruptcy Court*”) case number 07-20027-TD. On December 14, 2007, Seller consented to the entry of an order for relief.
- C.** On February 7, 2008, the Bankruptcy Court entered an order (I) approving bidding procedures for the sale of the Business, (II) approving the form and manner of notice, (III) scheduling an auction and sale hearing, and (IV) approving procedures for determining cure amounts (the “*Bidding Procedures Order*”).
- D.** Upon the terms and subject to the conditions set forth in this Agreement, and as authorized under Sections 363 and 365 of the Bankruptcy Code, Seller desires to sell to Purchaser all right, title and interest of Seller in and to the Acquired Assets and Purchaser desires to make such purchase, subject to Purchaser’s assumption of the Assumed Liabilities and the conditions set forth in this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises, mutual promises, representations, warranties and covenants contained in this Agreement and other good and valuable consideration, and intending to be legally bound hereby, the Parties agree:

#### 1. CONVEYANCE OF THE ACQUIRED ASSETS:

**1.1 Acquired Assets Transaction.** Upon the terms and subject to the conditions set forth in this Agreement, at Closing Seller shall sell, transfer, assign, convey and deliver to the Purchaser, and Purchaser shall purchase, accept and acquire from Seller, free and clear of all Liens except: (i) Permitted Liens; and (ii) Liens included in the Assumed Liabilities assumed by Purchaser pursuant to Article 2, if any, all of the assets and properties described in Section 1.1.1 below (collectively, the “*Acquired Assets*”), subject in each case to Section 1.1.2, wherever located, and whether or not reflected on the applicable records of Seller.

**1.1.1 Acquired Assets.** The Acquired Assets consist of substantially all of Seller’s right, title and interest in and to the rights and assets used solely or primarily by or in connection with the conduct of the Business (other than the Excluded Assets), including, without limitation:

- A. Personal Property.** The Personal Property listed on **SCHEDULE 1.1.1**.
- B. Permits.** The Permits and pending applications therefore and renewals

thereof.

**C. Inventory.** The Inventory.

**D. Transferred Contracts.** The Transferred Contracts and all rights under such Transferred Contracts (including Seller's rights against third party manufacturers to the extent any liability is assumed by Purchaser pursuant to Section 2.1).

**E. Administrative Assets.** Administrative Assets.

**F. Purchased Intellectual Property.** Purchased Intellectual Property and goodwill associated with both the Purchased Intellectual Property and the Business, including all Seller's Trademark Rights in product and service names and any derivatives thereof relating to the Business (whether as a trade name, entity name or otherwise), but not including Pay By Touch, Solidus, Solidus Networks and all related names).

**G. Prepaid Assets.** Any prepaid expenses and deposits, deferred charges, advance payments, security deposits and prepaid items, in each case, as they relate to the Acquired Assets or Assumed Liabilities.

**H. Claims.** All claims, warranties, choses in action, causes of action, rights of recovery and rights of set-off of any kind against third parties relating to the Business or the Acquired Assets or the Assumed Liabilities, and the right to receive and retain mail and other communications relating to the Business, the Acquired Assets or the Assumed Liabilities.

**I. Insurance Benefits.** All insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets acquired by Purchaser or the Assumed Liabilities prior to the Effective Time, unless expended in accordance with this Agreement.

**J. Other Assets.** All of Seller's rights in the other assets identified on

#### SCHEDULE 1.1.1.

**1.1.2 Excluded Assets.** Notwithstanding anything to the contrary in this Agreement or in any Ancillary Agreement, the following properties and assets shall not be included in the Acquired Assets, and Purchaser will not be deemed to purchase or acquire any of such assets or properties:

**A. Bailed Assets.** Any machinery, equipment, tools and Inventory owned by any third party listed in SCHEDULE 1.1.2.A ("*Third Party Bailed Assets*").

**B. Personnel and Medical Records.** All work histories, personnel and medical records of employees and former employees of Seller who worked at any time for any reason at the Business for whom a record exists at the Business at the time of Closing; *provided, however*, so far as legally permissible under applicable data protection, medical confidentiality or similar Laws: Purchaser will be provided the originals of all personnel and medical records of employees of Seller who have accepted employment with Purchaser in connection with the sale hereunder, with the prior written consent of such employee or after posted written notice or other appropriate notice to such employees if legally required. If an employee objects to provision of personnel or medical records to Purchaser, the records will not be provided.

**C. Certain Financial Assets.** Cash, cash equivalents, bank accounts and all accounts receivable.

**D. Tax Refunds.** Any refund of Taxes paid, or claim for refund of Taxes paid, of any kind relating to the Acquired Assets for any period prior to the Closing Date.

**E. Privileged Information and Materials.** Information and materials protected by the attorney-client privilege or that Seller considers to be proprietary information; and the lack of which excluded information and materials are not material to the operation of the Business, and provided that such materials are listed on **SCHEDULE 1.1.2.E** hereto.

**F. Insurance.** Except to the extent specified in Section 1.1.1(I), Seller's or Seller's Affiliates' insurance policies relating to the operation of the Business (including any right to proceeds thereunder).

**G. Certain Rights.** All of the rights and claims of Seller available to Seller under (i) the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551, inclusive, and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing and (ii) all claims, warranties, choses in action, causes of action, rights of recovery and rights of set-off of any kind against third parties to the extent relating to the Excluded Assets or Retained Liabilities, and the right to receive and retain mail and other communications relating to the Excluded Assets or Retained Liabilities.

**H. Other Excluded Assets.** All computer hardware, equipment and other assets listed on **SCHEDULE 1.1.2.H**.

**1.1.3 Post-Closing Asset Deliveries.** Should Seller or Purchaser, in their reasonable discretion, determine after the Closing that books, records or other similar materials constituting Acquired Assets are still in the possession of Seller, Seller shall promptly deliver them to Purchaser at no cost to Purchaser. Should Seller or Purchaser, in their reasonable discretion, determine after the Closing that books, records or other materials constituting Excluded Assets were delivered to Purchaser, Purchaser shall promptly return them to Seller at no cost to Seller other than reimbursing Purchaser's reasonable out-of-pocket costs and expenses.

## **2. ASSUMPTION OF LIABILITIES:**

**2.1 Assumed Liabilities.** At and as of the Closing, Purchaser shall assume and agree to pay, perform and discharge as and when due, and shall be liable with respect to, all obligations, liabilities and responsibilities specifically referred to in this Section 2.1 to the extent arising from or related to the Products or Business ("*Assumed Liabilities*"), other than the Retained Liabilities, as follows:

**2.1.1** The obligations of Seller arising after the Closing under the Contracts listed on **SCHEDULE 2.1.1** (the "*Transferred Contracts*") and the obligations of Seller arising after the Closing under the licenses and Permits included in the Acquired Assets that are assigned to Purchaser pursuant to this Agreement and listed on **SCHEDULE 2.1.1**.

**2.1.2** The obligation to pay for assets, goods or services ordered by Seller on or prior to the Closing that are received by the Purchaser after Closing.

**2.1.3** Liabilities and obligations arising out of, resulting from, or relating to sales pursuant to Transferred Contracts of Products or services by the Business, including all Product warranty and Product returns (other than product liability and product recall liability claims relating to Products or services by the Business to the extent such obligation results from or arises out of events, factors or

circumstances occurring or existing on or prior to the Closing, notwithstanding that the date on which any legal action is commenced or made is after the Closing).

**2.2 No Expansion of Third Party Rights.** The assumption by Purchaser of the Assumed Liabilities shall in no way expand the rights or remedies of any third party against Purchaser or Seller as compared to the rights and remedies that such third party would have had against Seller absent the Bankruptcy Case, had Purchaser not assumed such Assumed Liabilities. Without limiting the generality of the preceding sentence, the assumption by Purchaser of the Assumed Liabilities shall not create any third-party beneficiary rights other than with respect to the Person that is the obligee of such Assumed Liability.

**2.3 Retained Liabilities.** Notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume or be deemed to have assumed, and shall have no liability or obligation with respect thereto, any other liabilities of the Company (collectively, "**Retained Liabilities**") including without limitation the following: (i) liabilities in respect of employment or services performed on or prior to the Closing, including any and all liabilities whatsoever arising in connection with any employee benefit plan maintained by Seller; (ii) any litigation for which a claim has been made to or threatened against Seller, whether or not set forth on **SCHEDULE 5.1.6**; (iii) all Tax liabilities of Seller for all periods, including any Tax liabilities allocated to Seller pursuant to Section 10.3 (but excluding any Tax liabilities allocated to Purchaser pursuant to Section 10.3 of this Agreement); (iv) any liability or obligation of Seller for administrative fees and expenses, including, without limitation, any claims arising under Section 503(b) of the Bankruptcy Code; (v) any liability or obligation of Seller for transaction fees and expenses and fees and expenses payable to lenders, brokers, financial advisors, legal counsel, accountants and other professionals in connection with this Agreement; (vi) all Claims, except for Assumed Liabilities; (vii) all liabilities to employees of Seller who are not Transferred Employees or (viii) any liability or obligation not expressly assumed pursuant to Section 2.1 hereof.

### **3. PERSONNEL MATTERS; TRANSFERRED EMPLOYEES.**

**3.1 Business Employees.** Listed on **SCHEDULE 5.1.13** are all employees and consultants of Seller that perform services exclusively for the Business (each employee required to be so listed a "**Business Employee**"). With respect to each such employee and consultant (as limited in definition for purposes of this Article 3 only) included thereon, **SCHEDULE 5.1.13** lists: (i) each such person's title or job/position and (ii) each such person's job designation (*i.e.*, salaried or contract).

**3.1.1** Not later than the Closing Date, Purchaser will offer employment to all Business Employees (other than as set forth on **SCHEDULE 5.1.13**) with such new employment to commence (if accepted) with effect from the Closing and will confirm the list of such employees to Seller promptly thereafter.

**3.1.2** Any Business Employee that accepts and commences employment with Purchaser pursuant to a written offer letter with Purchaser shall be referred to herein as a "**Transferred Employee**".

**3.2 Cooperation.** Seller and Purchaser will provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this Article 3.

**3.3 No Third Party Rights.** No provision of this Agreement confers rights or remedies upon any person, including Transferred Employees, other than the Parties.

### **4. PURCHASE PRICE:**

**4.1 Purchase Price; Deposit Amount.** Subject to the terms and conditions of this Agreement, in consideration of the Sale, the aggregate purchase price for the Acquired Assets shall be the amount of: (a) \$600,000; plus (b) assumption of the Assumed Liabilities. The final aggregate purchase price, as so determined, is referred to herein as the “*Purchase Price*”.

**4.1.1 Deposit Amount.** Upon execution of this Agreement, Purchaser shall deposit with Seller, in a segregated, Lien-free account, \$30,000 in immediately available funds (such amount, together with the interest accrued thereon prior to the Closing, the “*Deposit Amount*”), to be released in accordance with the following procedures:

**A.** If the Closing occurs, the Deposit Amount shall be retained by Seller and applied towards the Purchase Price.

**B.** Upon any termination pursuant to Section 9.1.2, Seller shall retain the Deposit Amount and may transfer the Deposit Amount out of the segregated account.

**C.** Upon termination of this Agreement for any other reason, Seller shall deliver the Deposit Amount, by wire transfer of immediately available funds, to an account designated by Purchaser, to be retained by Purchaser.

**4.1.2 Delivery of Purchase Price.** At the Closing, Purchaser shall pay to Seller, an aggregate amount equal to the Purchase Price less the Deposit Amount (apportioned pursuant to the allocation referred to in Section 4.2) by wire transfer in immediately available funds to an account specified by Seller. All amounts paid by Purchaser pursuant to this Section 4.1 shall be credited against the Purchase Price, and upon delivery of any such payments by Purchaser, Purchaser’s obligation to pay the Purchase Price will be deemed satisfied and discharged to the extent of such payments. Under no circumstances will Purchaser be liable to Seller or any other Person for any action, omission or delay of Seller in dealing with any payment made by Purchaser in accordance herewith.

**4.2 Allocation of Purchase Price.** The Parties agree to allocate the Purchase Price among the Business and the agreements provided herein for transfer of the Business to Purchaser, for all purposes (including financial, accounting and tax) (the “*Allocation*”) in a manner consistent with the Allocation Schedule set forth in **SCHEDULE 4.2** to be mutually agreed upon by Purchaser and Seller in accordance with Section 1060 of the Internal Revenue Code based on the fair market value of the Acquired Assets. Purchaser shall provide to Seller a draft Allocation within 15 days following the Closing Date. This Allocation shall become final and binding on the Parties, unless Seller notifies Purchaser within 15 days after receipt of such Allocation of Seller’s disagreement with such Allocation. In the event Seller timely notifies Purchaser of such disagreement, the Parties shall resolve such disagreement in the manner described in Section 11.18 of this Agreement. Purchaser and Seller shall each report the federal, state and local income and other Tax consequences of the purchase and sale contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Internal Revenue Code (or any successor form or successor provision of any future tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. Seller shall provide Purchaser and Purchaser shall provide Seller with a copy of any information required to be furnished to the Secretary of the Treasury under Internal Revenue Code Section 1060.

**5. REPRESENTATIONS AND WARRANTIES:**

**5.1 Representations and Warranties of Seller.** Seller represents and warrants to Purchaser as follows:

**5.1.1 Organization and Good Standing.** Except as otherwise set forth on **SCHEDULE 5.1.1**, Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware, and has all requisite corporate power and, subject to any required Bankruptcy Court approval, authority to own, lease and operate its properties and assets and to carry on the Business as presently conducted, and is in good standing in all jurisdictions in which it owns or leases real property, except where the failure so to qualify or to be so licensed would not have a Material Adverse Effect.

**5.1.2 Corporate Power; Due Authorization.** Seller has the corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements, subject to Bankruptcy Court approval, to which it is a party, and to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated herein and therein. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation of the contemplated transactions have been duly authorized by all necessary action on the part of Seller. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement and the Ancillary Agreements have been duly and validly executed and delivered by or on behalf of Seller and (assuming this Agreement constitutes a valid and binding obligation of Purchaser) each such agreement constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and to general equitable principles.

**5.1.3 Consents and Approvals.** No consent, approval, authorization of, declaration, filing or registration with any domestic or foreign government or regulatory authority or any other third party is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements (including the assignment of all Transferred Contracts and all Purchased Intellectual Property), except for: (a) consents, approvals, authorizations of, declarations or filings with, the Bankruptcy Court that have been made or obtained, or will be made or obtained prior to the Closing, including resolution of any outstanding security interests; and (b) consents, approvals, authorizations, declarations, filings and registrations set forth on **SCHEDULE 5.1.3**, the lack of which would not have a Material Adverse Effect. The items referred to in clauses (a) and (b) of this Section 5.1.3 are hereinafter referred to as the "**Third-Party Requirements.**"

**5.1.4** [Reserved.]

**5.1.5 Personal Property; Condition of Personal Property:**

**A. Title to Personal Property.** Upon entry by the Bankruptcy Court of the Sale Approval Order, Seller shall transfer the Acquired Assets free and clear of any Lien, except as otherwise expressly indicated on **SCHEDULE 5.1.5.A**.

**B. Condition of Personal Property.** To Seller's Knowledge, the Personal Property included in the Acquired Assets is in such condition (considering age and purpose for which used) as to enable the Business to be conducted as currently conducted without material disruption.



**5.1.6 Litigation.** Except for the pendency of the Bankruptcy Case and any Claims referred to in **SCHEDULE 5.1.6**, there is no suit, action, proceeding or, to Seller's Knowledge, investigation (whether at law or equity, before or by any federal, state or foreign commission, court, tribunal, board, agency or instrumentality, or before any arbitrator) pending related to the Acquired Assets.

**5.1.7 Intellectual Property Assets:**

**A.** **SCHEDULE 5.1.7.A** sets forth a true and complete list of (1) each patent, trademark registration, copyright registration, domain name registration, and application therefor included in the Owned Intellectual Property included in the Acquired Assets and (2) all material Licensed Intellectual Property included in the Acquired Assets. To Seller's Knowledge there are no material impediments to the ability of Seller under applicable Laws to maintain in effect or renew, in all material respects, its rights in and to the Owned Intellectual Property included in the Acquired Assets. Except as set forth on **SCHEDULE 5.1.3** and/or **SCHEDULE 6.2.3**, to Seller's Knowledge there are no material impediments to the ability of Seller under applicable Law to grant to Purchaser, in all material respects, by license or assignment the rights to the Licensed Intellectual Property included in the Acquired Assets as contemplated in this Agreement.

**B.** To Seller's Knowledge, Seller is conducting the Business in a manner that does not violate the intellectual property right of another Person and no Claim has been made by any third party against Seller of Intellectual Property infringement or misappropriation resulting from the operation of the Business, except as set forth in **SCHEDULE 5.1.7.B**.

**C.** Seller has not granted any license, sublicense or other permission to use the Owned Intellectual Property included in the Acquired Assets to any third party, except as set forth on **SCHEDULE 5.1.7.C**.

**D.** Except as set forth on **SCHEDULE 5.1.7.D**: (1) all Owned Intellectual Property included in the Acquired Assets is owned solely and exclusively by Seller; and (2) upon entry by the Bankruptcy Court of the Sale Approval Order, Seller shall transfer the Owned Intellectual Property included in the Acquired Assets free and clear of any encumbrances thereon.

**E.** Except as set forth on **SCHEDULE 5.1.7.E**, no Owned Intellectual Property included in the Acquired Assets or any Product that contains any Owned Intellectual Property included in the Acquired Assets is, in whole or in part, governed by an Excluded License. For purposes of this Agreement, an "**Excluded License**" means any license that requires, as a condition of modification and/or distribution of software subject to the Excluded License, that: (1) such software and/or other software combined and/or distributed with such software be disclosed or distributed in source code form or (2) such software and/or other software combined and/or distributed with such software and any associated intellectual property be licensed on a royalty free basis (including for the purpose of making additional copies or derivative works).

**5.1.8 Insurance.** **SCHEDULE 5.1.8** contains a complete and correct list, in all material respects, of all material policies of insurance included in the Acquired Assets, indicating for each policy the carrier, risks insured, the amounts of coverage, deductible, expiration date and any material pending claims thereunder. All such policies are outstanding and in full force and effect.

**5.1.9 Compliance with Permits.** All Permits that are necessary to support the conduct of the Business and the ownership and operation of the Acquired Assets have been duly obtained, are in full force and effect, and there are no proceedings pending that may result in the revocation, cancellation or suspension, or any materially adverse modification, of any such Permit, except in each case as would not,

individually or in the aggregate, result in a Material Adverse Effect. The Business is in compliance with all Permits, except where the failure to be in compliance would not have a Material Adverse Effect. The execution, delivery and performance of, and compliance with, this Agreement and the Ancillary Agreements by Seller will not, with or without the passage of time or the giving of notice, result in any such violation or be in conflict with or constitute a default under any Permit.

**5.1.10 Brokers.** Seller has employed no finder, broker, agent or other intermediary in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby for which Purchaser would be liable.

**5.1.11 No Violations.** Assuming that the Third-Party Requirements will be satisfied, made or obtained and will remain in full force and effect, neither the execution, delivery or performance of this Agreement and the Ancillary Agreements by Seller, nor the consummation by Seller of the Sale, nor compliance by Seller with any of the provisions hereof and of the Ancillary Agreements, will, with or without the passage of time or the giving of notice: (a) result in any breach of any provisions of the articles of incorporation or bylaws of Seller; (b) result in a violation, or breach of, or constitute (with or without due notice or lapse of time) a default (or give rise to any right of termination, cancellation, amendment, vesting, payment, exercise, acceleration, suspension or revocation) under any of the terms, conditions or provisions of any note, bond, mortgage, deed of trust, security interest, indenture, loan or credit agreement, license, permit, contract, lease, agreement, plan or other instrument, commitment or obligation to which Seller is a party or by which its properties or assets may be bound or affected; (c) violate any order, writ, governmental authorization, injunction, decree, statute, rule or regulation applicable to Seller or to any of its properties or assets; or (d) result in the creation or imposition of any Lien other than Permitted Liens on any asset of Seller, except in the case of clauses (b), (c) and (d) above, for violations, breaches, defaults, terminations, cancellations, accelerations, creations, impositions, suspensions or revocations that: (1) would not individually or in the aggregate have a Material Adverse Effect; or (2) are excused by or unenforceable as a result of the filing of the Bankruptcy Case or the applicability of any provision of or any applicable law of the Bankruptcy Code.

**5.1.12 Contracts.** SCHEDULE 5.1.12 lists all Contracts of Seller that involve payment or performance obligations that individually will or are likely to exceed \$100,000 in the twelve months ending December 31, 2008, other than Accounts Receivable (collectively, "*Listed Contracts*"). SCHEDULE 5.1.12 identifies all Post-Petition Contracts included within the Listed Contracts other than immaterial Post-Petition Contracts and open purchase orders entered into in the Ordinary Course of Business. Except as set forth on SCHEDULE 5.1.12, and except for Post-Petition Contracts that are immaterial to the Business, none of the Post-Petition Contracts included within the Listed Contracts contains any provisions restricting its assignment to Purchaser pursuant to the terms of this Agreement.

**5.1.13 Business Employees.** SCHEDULE 5.1.13 contains a list of all Business Employees as of January 30, 2008, and, to Seller's knowledge, the information thereon is true, complete and correct in all material respects.

**5.1.14 Absence of Other Representations or Warranties.** Except for the representations and warranties expressly set forth in Section 5.1 of this Agreement and the Ancillary Agreements, Seller makes no representations or warranties, express or implied, with respect to the Acquired Assets, the Assumed Liabilities, the sale of the Acquired Assets, and in particular but without limitation, Seller makes no representations with respect to any plan(s) of Purchaser for the future conduct of the Business. For the avoidance of doubt, no warranty or representation is given on the contents of the documents provided in due diligence, on any other documents or other information not contained in this Agreement or the Ancillary Agreements, or on any projected volumes of the Business, all which were produced only for information purposes.

**5.2 Representations and Warranties of Purchaser.** Purchaser warrants and represents to Seller as follows:

**5.2.1 Organization and Good Standing.** Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, and has all requisite limited liability company power and authority to own, lease and operate its properties and assets.

**5.2.2 Corporate Power; Due Authorization.** Purchaser has the limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated herein and therein. The execution, delivery and performance of this Agreement and the Ancillary Agreements have been duly authorized by all necessary action on the part of Purchaser. This Agreement is, and the Ancillary Agreements to which Purchaser is a party will be, when executed and delivered (assuming this Agreement constitutes a legal, valid and binding obligation of Seller), valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws or proceedings affecting the enforcement of creditors' rights generally and by the availability of equitable remedies and defenses.

**5.2.3 No Violations.** Neither the execution, delivery or performance of this Agreement by Purchaser, nor the consummation by Purchaser of the transactions contemplated herein, nor compliance by Purchaser with any of the provisions hereof, will: (a) except for the Third-Party Requirements, require Purchaser to obtain any consent, approval or action of, or make any filing with or give notice to, any domestic or foreign governmental or regulatory body or any other Person; (b) conflict with or result in any breach of any provisions of the articles of organization of Purchaser; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Purchaser or Purchaser's properties or assets.

**5.2.4 Litigation.** Except for the pendency of the Bankruptcy Case, there is no suit, action, proceeding or investigation (whether at Law or equity, before or by any federal, state or foreign commission, court, tribunal, board, agency or instrumentality, or before any arbitrator) pending or, to the knowledge of Purchaser, threatened against or affecting Purchaser which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting Purchaser from consummating the transactions contemplated by this Agreement.

**5.2.5 Brokers.** Purchaser has employed no finder, broker, agent or other intermediary in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby for which Seller would be liable.

**5.2.6 Solvency.** Upon the consummation of the transactions contemplated by this Agreement: (a) Purchaser will not be insolvent; (b) Purchaser will not be left with unreasonably small capital; (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature; (d) the capital of Purchaser will not be impaired; and (e) immediately following closing, Purchaser will have sufficient capital to continue the Business as a going concern (it being understood that Purchaser will have no obligation to continue all or any portion of the Business as a going concern).

**5.2.7 Availability of Funds.** Purchaser has or will have available, at or prior to Closing, sufficient cash in immediately available funds to pay the Purchase Price and all of its costs, fees and expenses necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

**5.2.8 Adequate Assurance of Future Performance.** Purchaser has provided, at the time set forth in the Bidding Procedures Order, adequate assurance of its future performance under each Assumed Contract to the parties thereto (other than Seller) in satisfaction of Section 365(f)(2)(B) of the Bankruptcy Code, and no other or further assurance shall be necessary thereunder with respect to any Assumed Contract.

**5.2.9 Compliance with Law.** Purchaser is in compliance with all Laws applicable to it, except with respect to those violations that could not reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting Purchaser from consummating the transactions contemplated by this Agreement.

**5.2.10 Anti-Money Laundering.** Purchaser is in compliance with: (a) all applicable provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-57) ("*USA PATRIOT Act*") as amended and all regulations issued pursuant to it; (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibited Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (c) the International Emergency Economic Power Act (50 U.S.C. 1701 *et seq.*), and any applicable implementing regulations; (d) the Trading with the Enemies Act (50 U.S.C. 50 *et seq.*), and any applicable implementing regulations; and (e) all applicable legal requirements relating to anti-money laundering, anti-terrorism and economic sanctions in the jurisdictions in which Purchaser operates or does business. Neither the Purchaser nor any of its directors, officers or affiliates is identified on the United States Treasury Department Office of Foreign Asset Control's ("*OFAC*") list of "Specially Designated Nationals and Blocked Persons" (the "*SDN List*") or otherwise the target of an economic sanctions program administered by OFAC, and Purchaser is not affiliated in any way with, or providing financial or material support to, any such persons or entities. Purchaser agrees that should it, or any of its directors, officers or affiliates be named at any time in the future on the SDN List, or any other similar list maintained by the United States Government, Purchaser shall inform Seller in writing immediately.

**5.3 Survival of Representations, Warranties and Covenants of Seller and Purchaser.** The representations and warranties made by Seller and Purchaser in this Agreement, any Ancillary Agreement or any other document delivered to Purchaser hereunder or thereunder shall survive the execution and delivery of this Agreement and through the Closing, but shall not survive, and shall terminate at, the Closing. The covenants made by Seller and Purchaser in this Agreement or any Ancillary Agreement shall survive the Closing.

**6. CONDITIONS TO CLOSING:**

**6.1 Conditions to Obligations of Seller and Purchaser.** The respective obligations of each Party to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver at or prior to the Closing Date of the following conditions precedent:

**6.1.1 Sale Approval Order.** The Sale Approval Order, in form and substance reasonably satisfactory to Purchaser and Seller, shall be entered by the Bankruptcy Court and shall not be subject to a stay or injunction.

**6.1.2 No Law, Judgments, etc.** No provisions of any applicable Law and no judgment, injunction (preliminary or permanent), order or decree that prohibits, makes illegal or enjoins the consummation of the transactions contemplated by this Agreement shall be in effect (each Party taking any and all steps required by Section 8.2 of this Agreement).

**6.2 Conditions to Obligations of Purchaser.** The obligation of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions (any one or more of which may be waived in whole or in part by Purchaser):

**6.2.1 Accuracy of Representations and Warranties.** After giving effect to the Sale Approval Order, the representations and warranties of Seller contained in this Agreement that are qualified by materiality shall be true and correct, and the other representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, in each case as of the date hereof and as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which shall be true and correct only as of such date or time), other than any inaccuracies that do not, in the aggregate, have a Material Adverse Effect.

**6.2.2 Performance of Covenants.** Each of the Ancillary Agreements to which Seller is a party shall have been executed and delivered by Seller to Purchaser, and all other agreements and transactions contemplated hereby or in any Ancillary Agreement to be performed by Seller on or before the Closing shall have been performed in all respects.

**6.2.3 Other Approvals.** Except as expressly obviated by the terms of the Sale Approval Order, the third-party consents set forth in **SCHEDULE 6.2.3** shall have been received and all consents, approvals and filings in connection with Third-Party Requirements shall have been obtained or made in form and substance reasonably satisfactory to the Purchaser.

**6.3 Conditions to Obligations of Seller.** Except as otherwise permitted by this Agreement, the obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions (any one or more of which may be waived in whole or in part by Seller):

**6.3.1 Accuracy of Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement that are qualified by materiality shall be true and correct, and the other representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects, in each case as of the Closing Date if made on such date (except for representations and warranties that speak as of a specific date or time, which shall be true and correct only as of such date or time), other than any inaccuracies that do not, in the aggregate, have a material adverse effect on Purchaser.

**6.3.2 Performance of Covenants.** Each of the Ancillary Agreements to which Purchaser is a party shall have been executed and delivered by Purchaser to Seller, and all other agreements and transactions contemplated hereby or in any Ancillary Agreement to be performed by Purchaser on or before the Closing shall have been performed in all material respects, and Purchaser shall have provided adequate assurance of future performance under those Ancillary Agreements.

**6.3.3 Delivery of Purchase Price.** Purchaser shall have delivered to Seller the Purchase Price by wire transfer, in immediately available funds, to such bank account or bank accounts as shall be specified by Seller to Purchaser on the Closing Date.

## 7. CLOSING:

**7.1 The Closing.** Subject to the satisfaction of the conditions set forth in Article 6 of this Agreement, the closing (the "*Closing*") of the transactions contemplated hereby shall take place at the offices of Cooley Godward Kronish LLP, 101 California Street, Fifth Floor, San Francisco, California at

10:00 a.m. on the second Business Day after the conditions set forth in Article 6 shall have been satisfied or waived (other than conditions which by their nature can be satisfied only at the Closing), or on such other date or at such other time as the Parties may agree.

**7.2 Ancillary Agreements.** At the Closing, the Parties shall execute and deliver to the other the following agreements to which they are a party:

**7.2.1** Assignment and Assumption Agreement relating to the Transferred Contracts and Assumed Liabilities, consistent with the Sale Approval Order substantially in the form attached hereto as **SCHEDULE 7.2.1**.

**7.2.2** Bill of Sale substantially in the form attached hereto as **SCHEDULE 7.2.2**.

**7.3 Seller's Deliveries.** At the Closing, Seller shall deliver to Purchaser the following, in proper form for recording where appropriate:

**7.3.1** Executed assignments for the Permits and Contracts included in the Acquired Assets.

**7.3.2** An officer's certificate, dated as of the Closing Date, executed on behalf of Seller, certifying that the conditions specified in Section 6.2 have been fulfilled.

**7.3.3** Certified copies of all orders of the Bankruptcy Court pertaining to the contemplated transactions contemplated by this Agreement and the Ancillary Agreements, including the Sale Approval Order.

**7.3.4** Duly executed Bill of Sale transferring the Acquired Assets to Purchaser.

**7.3.5** Duly executed Intellectual Property assignments in form and substance reasonably satisfactory to Purchaser.

**7.3.6** Appropriate receipts.

**7.4 Purchaser's Deliveries.** At the Closing, Purchaser shall deliver to Seller, in proper form for recording where appropriate:

**7.4.1** The Purchase Price less the Deposit Amount as required by, and in accordance with, Section 4.1.

**7.4.2** An Assignment and Assumption Agreement pursuant to which the Purchaser assumes the Assumed Liabilities.

**7.4.3** An officer's certificate, dated as of the Closing Date, executed on behalf of Purchaser, certifying that the conditions specified in Section 6.3 have been fulfilled.

**8. CERTAIN ADDITIONAL COVENANTS:**

**8.1 Bankruptcy Actions:**

**8.1.1** Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Approval Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or

information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code.

**8.1.2** This Agreement is subject to approval by the Bankruptcy Court.

**8.2 Registrations, Filings and Consents; Further Actions.** Upon the terms and subject to the conditions of this Agreement, each of the Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all appropriate actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as practicable including, without limitation, using their reasonable best efforts to cause the satisfaction of all conditions to Closing.

**8.3 Operation of the Business Pending Closing:**

**8.3.1** Except: (a) as otherwise provided herein; (b) as required by or resulting from the Bankruptcy Case or otherwise approved by the Bankruptcy Court; (c) subject to any changes that may be required under applicable Laws; and (d) as set forth in the following sentence, until the Closing, Seller will (i) carry on the Business in substantially the same manner as heretofore, (ii) will perform in all material respects all of its obligations under all Assumed Contracts and not amend, alter or modify in any significant respect that is materially adverse to the Business any provision of any Assumed Contract, (iii) keep in full force and effect insurance comparable in amount and scope to coverage maintained by it on the date of this Agreement, (iv) use commercially reasonable efforts to maintain and preserve relations with customers, suppliers, employees and others having business relations with the Business, (v) endeavor to maintain the goodwill of the Business, (vi) maintain the Acquired Assets in good operating order and condition, reasonable wear and tear excepted, and promptly repair, restore or replace any Acquired Assets in the ordinary course of business, (vii) comply with all applicable Laws, Permits and Orders, (viii) use best efforts to obtain all approvals and consents, and (ix) keep in full force and effect, without amendment, all material rights relating to the Business.

**8.3.2** Seller shall promptly notify Purchaser if Seller becomes aware of the occurrence of any event or circumstance that would reasonably be expected to cause the conditions set forth in Sections 6.1.1, 6.1.2, 6.2.1 or 6.2.3 hereof not to be satisfied including, without limitation, any event or circumstance that, upon the occurrence of such event or circumstance, causes any representation or warranty of Seller to be untrue at the time of the occurrence of such event or condition.

**8.3.3** Purchaser shall promptly notify Seller if Purchaser becomes aware of the occurrence of any event or circumstance that could reasonably be expected to cause the conditions set forth in Sections 6.1.1, 6.1.2 or 6.3.1 hereof not to be satisfied including, without limitation, any event or circumstance that, upon the occurrence of such event or circumstance, causes any representation or warranty of the Purchaser to be untrue in any respect at the time of the occurrence of such event or condition.

**8.4 Assumed Contracts; Cure Amounts.** Seller shall pay Cure Amounts as agreed to by Seller and each party to an Assumed Contract or, absent such agreement, by order of the Bankruptcy Court in the time and manner specified by the Sale Approval Order.

**8.5 Post-Closing Covenants.** From and after the Closing, each of the Parties will perform its respective covenants and agreements set forth below:

**8.5.1 Books and Records and Litigation Assistance From and After Closing:**

**A.** Purchaser and its Affiliates shall use reasonable efforts to preserve and keep all books, records, computer files, software programs and any data processing files delivered to Purchaser by Seller and its Affiliates pursuant to the provisions of this Agreement for a period of not less than one year from the Closing Date at Purchaser's sole cost and expense. If and when Purchaser believes that such records are no longer legally required, it will notify Seller. During such period, Purchaser shall: (i) provide Seller or its Affiliates reasonable access, during normal business hours, and in a manner so as not to unduly interfere with the normal operations of Purchaser, to such documents and information as reasonably necessary to complete the accounting books and records of the Business as of the Closing Date; and (ii) make such books and records available, during normal business hours, and in a manner so as not to unduly interfere with the normal operations of Purchaser, to Seller and its Affiliates as may be reasonably required by Seller in connection with the Bankruptcy Case, in connection with any legal proceedings against or governmental investigations of Seller and its Affiliates or in connection with any Tax examination, audit or appeal of Taxes of Seller and its Affiliates, the Business or the Acquired Assets during such period. Seller shall reimburse Purchaser for the reasonable costs and expenses incurred in connection with any request by Seller to make available records pursuant to the foregoing sentences. In the event Purchaser wishes to destroy or dispose of such books and records after one year from the Closing Date, it shall first give not less than 30 days' prior written notice to Seller, and Seller shall have the right, at its option, upon prior written notice given to Purchaser within 20 days of receipt of Purchaser's notice, to take possession of said records within 30 days after the date of Purchaser's notice to Seller hereunder.

**B.** Purchaser, for itself and on behalf of its Affiliates, agrees to: (i) retain all documents required to be maintained by federal, state, national or local legislation or regulations; (ii) make available documents and records delivered to it by Seller reasonably necessary in connection with any pursuit, contest or defense related to the Business, including documents that may be considered to be "confidential" or subject to trade secret protection (except that: (a) no documents or records protected by the attorney client privilege in favor of Purchaser must be made available if making these documents or records available would cause the loss of this privilege (in any case, however, Purchaser must notify Seller of the existence of such privileged documents); and (b) Seller will agree to keep confidential and not use for any other purpose documents and records that are confidential or are subject to trade secret protection); and (iii) make available, as may be reasonably necessary and upon reasonable advance notice and for reasonable periods so as not to significantly interfere with Purchaser's business, mutually acceptable engineers, technicians or other knowledgeable individuals to assist Seller and its Affiliates in connection with such claim.

**8.5.2 Payment and Collections.** Seller shall take such action as may be reasonably necessary to segregate payments made or collections received on behalf of Purchaser after Closing, and Seller hereby grants to Purchaser the power, right and authority, coupled with an interest, to receive, endorse, cash, deposit, and otherwise deal with, in the name of Seller, any checks, drafts, documents and instruments evidencing payment of any accounts receivable or other payment rights included in the Acquired Assets and that are payable to, payable to the order of, or endorsed in favor of Seller or any agent of Seller. Seller agrees promptly to endorse and pay over or cause to be endorsed and paid over to Purchaser, without deduction or offset, the full amount of any payment received by Seller after the Closing in respect of goods sold or services rendered as part of the Business, and will hold any such amount in trust for Purchaser pending such payment. Seller shall promptly send Purchaser copies of all remittance advices and checks related to payments received by Seller with respect to such items. Purchaser shall notify the Business' customers of the change in address of the owner of the Acquired Assets as may be required in order for such customers to properly remit any payments required under any applicable Acquired Asset and Seller shall cooperate with Purchaser as is necessary to so notify such customers, including providing



appropriate contact information for each such customer.

**8.5.3 Mail.** From and after the Closing, Seller will promptly forward or cause to be forwarded to Purchaser any mail received by Seller or any of its Affiliates that relates to the Business, the Acquired Assets, or the Assumed Liabilities.

**8.6 Certain Transactions.** Purchaser shall not, and shall cause its Affiliates not to, acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets if the entering into of a definitive agreement relating to or the consummation of such acquisition, merger or consolidation would reasonably be expected to: (a) impose any material delay in the obtaining of, or significantly increase the risk of not obtaining, any authorizations, consents, orders, declarations or approvals of any Governmental Entity necessary to consummate the transactions contemplated by this Agreement or the Ancillary Agreements or the expiration or termination of any applicable waiting period; (b) significantly increase the risk of any Governmental Entity entering an order prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements; (c) significantly increase the risk of not being able to remove any such order on appeal or otherwise; or (d) materially delay or prevent the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

**8.7 Communications with Customers and Suppliers.** Prior to the Closing, Purchaser shall not, and shall cause its Affiliates and representatives not to, contact, engage in any discussions or otherwise communicate with any of the Business' customers, suppliers and others with whom it has material commercial dealings without obtaining the prior written consent of Seller (which shall not be unreasonably withheld and which may be conditioned on Seller having the right to participate in any meetings or discussion with any such customers, suppliers or others); provided, that Purchaser and Seller shall work together in good faith to arrange for an orderly transition of customer, supplier, and other third party relationships, including, without limitation, at the request of Purchaser, meetings (including with Seller) and other correspondence with such customers, suppliers, and other third parties to ensure such orderly transition. After the Closing, Seller will cooperate to the fullest extent reasonably practical with Purchaser in its efforts to continue and maintain for the benefit of Purchaser those business relationships of Seller existing prior to the Closing relating to the Business and relating to the business to be operated by Purchaser after the Closing, but only with respect to the Acquired Assets and the Business. Seller will refer to Purchaser all inquiries relating to the Business.

**8.8 Cooperation.** Subject to the terms and conditions provided in this Agreement, each of the Parties will use its commercially reasonable best efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated herein, to obtain all necessary waivers, consents and approvals, to effect all necessary registrations and filings, and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated herein for the purpose of securing to the Parties hereto the benefits contemplated by this Agreement.

**8.9 Removal of Assets.** Seller shall cause the Premises to be available to Purchaser for a reasonable period of time following Closing, but in any event, no fewer than ten (10) Business Days, in order for Purchaser to remove any of its Acquired Assets located on or at the Premises. Such removal shall be done in such manner as to avoid any damage to the Premises.

**8.10 Consents; Failure to Obtain Consents.** Without prejudice to Section 7.3, after the

Closing, Seller will use its commercially reasonable best efforts to obtain or cause to be obtained any Third-Party Requirements (including any other consents that may be required in connection with the transactions contemplated herein) that have not been previously obtained prior to or at the Closing. Notwithstanding anything to the contrary set forth herein, this Agreement will not constitute an assignment or attempt to assign or transfer any interest in any Contract or Permit otherwise included in the Acquired Assets, or any claim, right or benefit arising thereunder or resulting therefrom, if such assignment or transfer is without the consent of a third party and would constitute a breach or violation thereof or adversely affect the rights of Purchaser, the Acquired Assets or the Business. Until all such consents are obtained, Seller will cooperate to the fullest extent possible in any arrangement reasonably satisfactory to Purchaser designed to fulfill Seller's obligations thereunder and to afford Purchaser the continued full benefits thereof.

**9. TERMINATION:**

**9.1 Termination.** Anything contained herein to the contrary notwithstanding, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date:

**9.1.1 By Either Party:**

- A. By mutual written consent of Seller and Purchaser.
- B. Provided the terminating Party is not in default of its obligations under this Agreement, if consummation of the Sale would violate any non-appealable Final Order of any Governmental Entity, other than the Bankruptcy Court.
- C. Provided the terminating Party is not in default of its obligations under this Agreement, by either Seller or Purchaser if the Closing shall not have occurred by February 29, 2008.
- D. If the Bankruptcy Court has not entered the Sale Approval Order, on or before February 29, 2008 (the "**Termination Date**") or such Sale Approval Order is subject to a stay or injunction; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1.1.D shall not be available to Purchaser or Seller if Purchaser or Seller shall have failed to perform, or caused any of their respective Affiliates to perform in all material respects, any of their respective obligations under this Agreement.

**9.1.2 By Seller.** By Seller, if (a) any condition to the obligations of Seller set forth in Section 6.1 or Section 6.3 shall have become incapable of fulfillment other than as a result of a breach by any Seller of any covenant or agreement contained in this Agreement, and such condition or compliance with such agreement is not waived by Seller or (b) there shall be a material breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement, that would result in a failure of a condition set forth in Section 6.1 or Section 6.3, and which breach cannot be cured or has not been cured by the earlier of (i) seven Business Days after giving of written notice by Seller to Purchaser of such breach and (ii) the Termination Date.

**9.1.3 By Purchaser.** By Purchaser, if (a) any condition to the obligations of Purchaser set forth in Section 6.1 or Section 6.2 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition or compliance with such agreement is not waived by Purchaser or (b) there shall be a material breach by Seller of any representation or warranty, or any covenant or agreement contained in this Agreement, that would result in a failure of a condition set forth in Section 6.1 or Section 6.2, and which breach cannot be

cured or has not been cured by the earlier of (i) seven Business Days after giving of written notice by Purchaser to Seller of such breach and (ii) the Termination Date.

**9.2 Notice of Termination.** In the event of any termination pursuant to this Article 9, written notice thereof setting forth the reasons therefor shall promptly be given to the other Party and the transactions contemplated by this Agreement shall be terminated, without further action by any Party.

**9.3 Procedure and Effect of Termination.** In the event of termination and abandonment of the transactions contemplated hereby pursuant to Section 9.1, written notice thereof shall forthwith be given to the other Parties to this Agreement, and this Agreement shall terminate (subject to the provisions of this Article 9) and the transactions contemplated by this Agreement shall be abandoned, without further action by any of the Parties hereto. If this Agreement is terminated as provided herein no Party shall have any liability or further obligation to any other Party resulting from such termination except for the provisions of: (i)(a) Purchasers' obligations under any confidentiality agreement between Purchaser and Seller; (b) Article 9 (Termination); and (c) Sections 4.1.1(B) (Deposit Amount), 11.2 (Notices), 11.3 (Assignment), 11.4 (Entire Agreement), 11.5 (Waiver), 11.7 (Amendment), 11.8 (Expenses), 11.12 (Governing Law), 11.13 (Public Announcements), 11.15 (Venue and Retention of Jurisdiction) and 11.18 (Dispute Resolution), all of which shall remain in full force and effect; and (ii) no Party waives any claim or right under Applicable Law, in equity or otherwise, by reason of such breach that it may have against a breaching Party in respect of any of its representations, warranties, covenants or agreements set forth in this Agreement occurring prior to such termination. In connection with any termination of this Agreement, all filings, applications and other submissions made pursuant to the transactions contemplated by this Agreement shall, to the extent practicable, be withdrawn from the agency or Person to which made.

## **10. OTHER TAX MATTERS:**

**10.1 Tax Returns for Pre-Closing Period.** Seller will be responsible for the preparation and filing of all Tax Returns for the Business for the period ending on the Closing Date, including amended returns, applications for loss carryback refunds and applications for estimated tax refunds. Purchaser shall make available to Seller (and to Seller's accountants and attorneys) any and all books and records and other documents and information in its possession or control reasonably requested by Seller to prepare these Tax Returns. Seller will make all payments required with respect to any such Tax Return.

**10.2 Tax Returns for Post-Closing Period.** Purchaser will be responsible for the preparation and filing of all Tax Returns for the Business for the period beginning after the Closing Date (other than for Taxes with respect to periods for which the consolidated, unitary and Tax Returns of Seller will include the operations of the Business). Purchaser shall be responsible for and shall pay when due all Taxes attributable, levied or imposed upon or incurred in connection with the Acquired Assets and the Business pertaining to: (a) the period after the Closing Date; and (b) the portion of any Taxes for which Purchaser is liable as determined in accordance with Section 10.3 below.

**10.3 Straddle Period.** For purposes of this Article 10 and Section 2.3, whenever it is necessary to allocate the liability for Taxes for a Straddle Period, the determination of the Taxes of the Business for the portion of the Straddle Period ending at the end of the Closing Date (the "**Pre-Closing Portion**") and the portion of the Straddle Period beginning after the Closing Date (the "**Post-Closing Portion**") will be determined by assuming that the Straddle Period consisted of two taxable years or periods, one of which ended at the close of business on the Closing Date and the other of which began at the beginning of the day after the Closing Date, and items of income, gain, deduction, loss or credit related to the Acquired Assets and the Business for the Straddle Period will be allocated between such two taxable years or periods on a "closing of the books basis" by assuming that the books associated with

the Business were closed at the end of the Closing Date; *provided, however*, that all real property taxes, personal property taxes, ad valorem obligations and similar taxes imposed on a periodic basis, in each case levied with respect to the Acquired Assets (other than Taxes resulting from the transactions described herein as provided for in Section 10.1) for a Straddle Period shall be apportioned between Seller and Purchaser as of the Closing Date based on the number of days of such taxable period up to and including the Closing Date and the number of days of such taxable period following the Closing Date. Seller shall be liable for the proportionate amount of such taxes that is attributable to the period up to and including the Closing Date; Purchaser shall be liable for the proportionate amount of such taxes that is attributable to the period following the Closing Date.

**10.4 Cooperation.** Seller and Purchaser will cooperate in connection with: (a) the preparation of filing of any Tax Return, Tax election, Tax consent or certification or any claim for a Tax refund; (b) any determination of liability for Taxes; and (iii) any audit, examination or other proceeding in respect of Taxes related to the Business or the Acquired Assets. Such cooperation includes a reasonable amount of direct access to accounting, engineering and contracting personnel, subject to availability, which shall not be unreasonably restricted, and advance notice to Purchaser.

**10.5 Tax Elections.** Seller shall not, and shall not cause the Business to make, revoke or amend any tax election, execute any waiver of restrictions or tax assessments or collections or extensions if there will be any impact on Purchaser as a result of doing so.

**11. MISCELLANEOUS:**

**11.1 Bulk Sales Laws.** Seller and Purchaser hereby waive compliance by Seller with the provisions of the bulk sales Law of any state or foreign jurisdiction.

**11.2 Notices.** All notices, requests, consents or other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, or when sent if sent via facsimile (with receipt confirmed), or on the first business day after sent by reputable overnight carrier, or on the third business day after sent by registered or certified first class mail (with receipt confirmed), to Purchaser or Seller at the address or facsimile set forth below (or at such other address as the intended recipient shall have specified in a written notice given to the other Party hereto):

**If to Seller:**                   **SOLIDUS NETWORKS, INC.**  
c/o Solidus Networks, Inc.  
101 Second Street, Suite 1100  
San Francisco, CA 94105  
Attn: Steve Zelinger  
Fax No.: (415) 371-5685

With a copy to: **HENNIGAN, BENNETT & DORMAN LLP**  
865 South Figueroa Street, Suite 2900  
Los Angeles, California 90017  
Attn: Joshua M. Mester  
Fax No.: (213) 694-1234

With a copy to: **COOLEY GODWARD KRONISH LLP**  
101 California Street, Fifth Floor  
San Francisco, CA 94111  
Attn: Kenneth L. Guernsey  
Fax No.: (415) 693-2222

**If to Purchaser:** **ACCULLINK, LLC**  
2812 Spring Road  
Atlanta, Georgia 30339  
Attn: Chuck Thakker  
Fax No.:

With a copy to: **KILPATRICK STOCKTON LLP**  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309  
Attn: W. Benjamin Barkley  
Fax No.: (404) 541-3121

**11.3 Assignment.** This Agreement shall be binding and inure to the benefit of the successors and assigns of each of the Parties and their Affiliates, but no rights, obligations, duties or liabilities of either Party may be assigned without the prior written consent of the other, which shall not be unreasonably withheld.

**11.4 Entire Agreement.** This Agreement, together with the Ancillary Agreements and schedules hereto, represents the entire agreement and understanding between the Parties with respect to the transactions contemplated herein. This Agreement supersedes all prior agreements, understandings, arrangements, covenants, representations or warranties, written or oral, by any officer, employee or representative of either Party dealing with the subject matter hereof.

**11.5 Waiver.** Any waiver by Seller or Purchaser of any breach or of a failure to comply with any provision of this Agreement: (i) shall be valid only if set forth in a written instrument signed by the Party to be bound; and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any provision of this Agreement. At any time prior to the Closing Date, the Parties may: (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto; (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein. Except as otherwise expressly provided herein, any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party.

**11.6 Severability.** Should any provision, or any portion thereof, of this Agreement for any reason be held invalid or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions, or portions thereof, of this Agreement, which other provisions, and portions, shall remain in full force and effect, and the application of such invalid or unenforceable provision, or portion thereof, to persons or circumstances other than those as to which it is held invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by Law.

**11.7 Amendment.** This Agreement may only be amended only in writing by duly authorized representatives or officers of the Parties.

**11.8 Expenses.** Each Party shall be responsible for its own expenses incurred in connection with the preparation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby.

**11.9 Third Parties.** Nothing contained in this Agreement, express or implied, is intended to or shall be construed to confer upon or give to any person, firm, corporation, association, labor union or trust (other than the Parties, their Affiliates and their respective permitted successors and assigns), any claims, rights or remedies under or by reason of this Agreement.

**11.10 Headings.** The headings contained in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**11.11 Counterparts.** More than one counterpart of this Agreement may be executed by the Parties, and each fully executed counterpart shall be deemed an original.

**11.12 Governing Law.** This Agreement shall be construed and enforced in accordance with the Laws of the State of California and, to the extent applicable the Bankruptcy Code, without giving effect to rules governing the conflict of laws.

**11.13 Public Announcements.** Seller and Purchaser will consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and shall not issue any press release or make any public statement without mutual consent, except as may be required by Law and then only with such prior consultation.

**11.14 Sales or Transfer Taxes.** All sales taxes, documentary and stamp taxes, transfer taxes, use taxes, gross receipts taxes, excise taxes, value-added gross receipt taxes or similar charges and all charges for filing and recording documents in connection with the transfer of the Acquired Assets (including intellectual property filing and recording fees) shall be paid by Purchaser.

**11.15 Venue and Retention of Jurisdiction.** All actions brought, arising out of or related to the transactions contemplated in this Agreement shall be brought in the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to determine any and all such actions.

**11.16 Risk of Loss.** Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Acquired Assets or the Business shall be borne exclusively by Seller.

**11.17 Enforcement of Agreement.** The Parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to all other remedies available at Law or in equity.

**11.18 Dispute Resolution.** Seller and Purchaser will, in the first instance, attempt to settle any and all claims or disputes arising in connection with this Agreement or any Ancillary Agreement by good faith negotiations by senior management of each Party. If the dispute is not resolved by senior management within 30 days after delivery of a written request for such negotiation by either Party to the other, either Party may make a written demand for formal dispute resolution (the "*Notice*") and specify therein in reasonable detail the nature of the dispute. Within 15 business days after receipt of the Notice, the receiving Party shall submit to the other a written response. The Notice and the response shall include: (i) a statement of the respective Party's position and a summary of arguments supporting that position; and (ii) the name and title of the executive who will represent that Party and of any other person

who will accompany the executive to meetings of the Parties. Within 15 business days after such written notification, the executives (and others named in the Notice or response) will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored promptly. All negotiations pursuant to this Section 11.18 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. In any case, the Parties agree not to commence any litigation actions until the expiration of 90 days after the date of the Notice, and all such actions are subject to Section 11.15 above.

**11.19 No Right of Setoff.** Neither Party hereto nor any Affiliate thereof may deduct from, set off, holdback or otherwise reduce in any manner whatsoever any amount owed to it hereunder or pursuant to any Ancillary Agreement against any amounts owed hereunder or pursuant to any Ancillary Agreement by such Persons to the other Party hereto or any of such other Party's Affiliates.

**11.20 Limitation on Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING ARTICLE 11, IN NO EVENT SHALL PURCHASER OR SELLER BE LIABLE FOR, OR BEAR ANY OBLIGATION IN RESPECT OF, ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER OR ANY DAMAGES RELATING TO, OR ARISING OUT OF, DIMINUTION IN VALUE, LOST PROFITS OR CHANGES IN RESTRICTIONS ON BUSINESS PRACTICES.

**[Remainder of Page Intentionally Left Blank]**


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

**SELLER:**

**PURCHASER:**

**SOLIDUS NETWORKS, INC.**

**ACCULLINK, LLC**

By:   
Print Name: THOMAS E. LUMSDEN  
Title: Chief Restructuring officer

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

**SELLER:**

**PURCHASER:**

**SOLIDUS NETWORKS, INC.**

**ACCULLINK, LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: CK Thakkar  
Print Name: C. K. THAKKAR  
Title: Vice President

*[Signature Page to ATM Direct Asset Sale and Purchase Agreement]*

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## SCHEDULE A

### DEFINITIONS

The following terms, as used in this Agreement, shall have the following meanings whether used in the singular or plural (other terms are defined in Sections or Schedules to which they pertain):

**“Accounts Receivable”** means, only to the extent primarily or solely related to the Products and the Business, all trade accounts receivable and other rights to payment from customers and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of products or services delivered to customers, all other accounts or notes receivable and the full benefit of all security for such accounts or notes and any claim, remedy or other right related to any of the foregoing.

**“Acquired Assets”** means the assets referred to in Section 1.1.1.

**“Administrative Assets”** means books, records and other administrative assets used exclusively in or necessary for continuing the operations of the Business including but not limited to advertising and promotional materials, catalogues, price lists, correspondence, mailing lists, customer lists, vendor lists, photographs, production data, sales materials and records, purchasing materials and records, personnel records of employees, billing records, accounting records, other financial records, and sale order files.

**“Affiliate”** means with respect to any Party any business or other entity directly or indirectly controlling, controlled by or under common control with such specified entity. For purposes of this definition, control means ownership of more than 50% of the shares or other equity interest having power to elect directors or persons performing a similar function.

**“Agreement”** means this Asset Sale and Purchase Agreement, including its Schedules.

**“Allocation”** means allocation of the Purchase Price, as described in Section 4.2.

**“Ancillary Agreements”** means the agreements referred to in Section 7.2.

**“Assumed Contracts”** means those Transferred Contracts entered into by Seller before the Petition Date.

**“Assumed Liabilities”** means the obligations assumed by Purchaser pursuant to Article 2, but only to the extent that an obligation: (a) arises on or after the Closing; and (b) with respect to obligations arising under Transferred Contracts: (i) does not arise from or relate to any breach by Seller of any provision of any of the Transferred Contracts; (ii) does not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing that, with or without notice or lapse of time, would constitute or result in a breach of any of the Transferred Contracts; and (iii) is ascertainable by reference to the express terms of the Transferred Contracts.

**“Bankruptcy Case(s)”** shall have the meaning set forth in the Recitals.

**“Bankruptcy Code”** shall have the meaning set forth in the Recitals.

**“Bankruptcy Court”** shall have the meaning set forth in the Recitals.

**“Bankruptcy Rules”** means the U.S. Federal Rules of Bankruptcy Procedure.

**“Bidding Procedures Order”** shall have the meaning set forth in the Recitals.

**“Business”** means the online (*i.e.* real-time) debit payment acquisition/processing business operated by the Seller under the name “ATM Direct.”

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which banks in Los Angeles, California are authorized or obligated by Law or executive order to close.

**“Business Employees”** shall have the meaning set forth in Section 3.1.

**“Claims”** mean losses, liabilities, claims (as defined in Section 101 of the Bankruptcy Code), damages or expenses (including reasonable legal fees and expenses) of any kind, character or description, whether known or unknown, fixed, liquidated, contingent, accrued, secured, due, vested, or otherwise.

**“Closing”** shall have the meaning set forth in Section 7.1.

**“Closing Date”** means the date of Closing.

**“Contracts”** mean all written or oral purchase orders, sales agreements, service contracts, distribution agreements, sales representative agreements, employment or consulting agreements, leases (for real property, personal property or otherwise), product warranty or service agreements and other commitments, agreements and undertakings of any nature, including quotations and bids outstanding on the Closing Date, in each case, that are primarily or solely related to the Products, the Business or the Acquired Assets

**“Copyrights”** mean: (i) copyrights existing anywhere (registered, statutory or otherwise) and registrations, renewals, revivals, reissues, extensions and applications for registration thereof, and all rights therein, provided by international treaties or conventions; (ii) moral rights (including, without limitation, rights of paternity and integrity), and waivers of such rights by others; (iii) database and data protection rights whether or not based on copyright; (iv) semiconductor chip mask work registrations and applications for registration thereof; (v) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; (vi) all rights to file and apply for, prosecute, defend and enforce any of the foregoing; and (vii) all rights to sue or recover and retain damages and costs and attorneys’ fees for present and past infringement of any of the foregoing.

**“Cure Amounts”** means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise effectuate, pursuant to the Bankruptcy Code, the assumption by Seller and assignment to Purchaser of the Assumed Contracts under the Sale Approval Order that are Transferred Contracts.

**“Deposit Amount”** shall have the meaning set forth in Section 4.1.1.

**“Disclosure Schedules”** means, collectively, the Schedules to Seller’s Representations and Warranties contained in Section 5.1.

**“Excluded Assets”** means assets not included in the Acquired Assets, as set forth in Section 1.1.2.

**“Excluded License”** shall have the meaning set forth in Section 5.1.7.E.

**“Final Order”** means an order or judgment: (i) as to which the time to appeal, petition for certiorari or move for review or rehearing has expired and as to which no appeal, petition for certiorari or

other proceeding for review or rehearing is pending or (ii) if an appeal, writ of certiorari, re-argument or rehearing has been filed or sought, the order or judgment has been affirmed by the highest court to which such order or judgment was appealed or certiorari has been denied, or re-argument or rehearing shall have been denied or resulted in no modification of such order or judgment, and the time to take any further appeal or to seek certiorari or further re-argument or rehearing has expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order or judgment shall not prevent such order or judgment from being considered a Final Order.

**“Governmental Entity”** means any United States federal, state or local, tribunal, legislative, executive, governmental, quasi-governmental or regulatory authority, self-regulatory authority, agency, department, commission, instrumentality or body having governmental authority with respect to the transactions contemplated hereby, under applicable Law.

**“Including”** means, whether or not initially capitalized, including without limitation.

**“Intellectual Property”** means Patent Rights, Trademark Rights, Copyrights, Software, Technical Documentation, Trade Secrets, Know-How and registered domain names and IP addresses.

**“Inventory”** means finished goods, raw materials, work-in-process, packaging, stores, stock, supplies, and other inventory, wherever located.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.

**“Know-How”** means proprietary technical and business knowledge and information, including specifications, designs, methodologies, processes and production techniques resulting from research and development, technology, manufacturing and production processes, research and development information, drawings, specifications, designs, plans, proposals, technical data, vendor and marketing and business data and customer and vendor lists and information, whether or not confidential.

**“Laws”** means laws, statutes, rules, ordinances, codes, standards, administrative rulings or regulations of any applicable federal, state, local or foreign Governmental Entity.

**“Licensed Intellectual Property”** means Seller’s rights with respect to all Intellectual Property licensed or sublicensed to Seller from an affiliated or unaffiliated third party.

**“Lien”** means any lien, charge, claim, pledge, security interest, conditional sale agreement or other title retention agreement, title defect or restriction, lease, mortgage, objection, pledge, security interest, option, hypothecation, restriction, covenant, transfer restriction, right of first refusal, adverse claim, easement, right-of-way, claim or charge of any kind or nature whatsoever or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

**“Listed Contracts”** means Seller’s contracts and commitments listed on **SCHEDULE 5.1.12**.

**“Material Adverse Effect”** means any change or event that has a material adverse effect on the business, assets, properties, financial condition or results of operations of the Business taken as a whole, except any change or event resulting from, relating to or arising out of: (a) any act or omission of Seller taken with the prior written consent of the Purchaser; (b) any action taken by Seller or Purchaser or any of their respective representatives required by the terms of this Agreement; (c) general business or economic conditions; (d) conditions affecting the industry and markets in which the Business generally operates;

(e) increases in energy, electricity, natural gas, raw materials or other operating costs; (f) changes resulting solely from the filing of the Bankruptcy Case or from any action required by the Bankruptcy Court; (g) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon such country, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of any of such countries; (h) acts of God; (i) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (j) changes in United States generally accepted accounting principles or generally accepted accounting principles of any foreign jurisdiction; (k) changes in any Law; (l) any existing event, occurrence or circumstance listed in the Disclosure Schedule as of the date hereof; (m) any adverse change in or effect on the Business that is entirely cured by Seller before the earlier of: (1) the Closing Date; and (2) the date on which this Agreement is terminated pursuant to Section 9.1 hereof; or (n) the regulatory status of the Purchaser.

“**Notice**” shall have the meaning set forth in Section 11.18.

“**OFAC**” shall have the meaning set forth in Section 5.2.10.

“**Ordinary Course of Business**” means, with respect to the Business, the ordinary course of business consistent with custom and practice of the Business from and after the Petition Date or to the extent consistent with orders issued in the Bankruptcy Case.

“**Owned Intellectual Property**” means all Intellectual Property in and to which Seller holds, or has a right to hold, in whole or in part, right, title and interest.

“**Party**” or “**Parties**” means Purchaser and/or Seller.

“**Patent Rights**” means: (i) patentable inventions, whether or not reduced to practice, and whether or not yet made the subject of a pending patent application or applications; (ii) designs, ideas and conceptions of patentable subject matter, including, without limitation, any patent disclosures and inventor certificates, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (iii) national (including the United States) and multinational statutory invention and design registrations, patents, and patent applications (including all provisionals, substitutions, reissues, divisions, continuations, continuations-in-part, extensions and reexaminations) and all rights therein provided by international treaties or conventions, and all patentable improvements to the inventions disclosed in each such registration, patent or application; (iv) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; 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.

“**Permits**” means permits, concessions, grants, franchises, licenses, qualifications, certificates, exemptions, and other governmental authorizations and approvals issued to Seller and are used in the conduct of the Business or that relate to the Acquired Assets.

“**Permitted Lien**” means Liens of Seller’s pre-Petition Date secured lenders and post-Petition Date secured lenders, but only to the extent such Liens are released on or prior to the Closing of the Sale.

“**Person**” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or other entity or organization.

“**Personal Property**” means tangible personal property other than Inventory, including production machinery, equipment, related spare parts, business machines, computer hardware and other IT assets

other than Intellectual Property, office furniture and fixtures, in-factory vehicles, trucks and other tangible personal property, whether located at the Premises, at the place of business of a vendor or elsewhere.

**“Petition Date”** shall mean December 14, 2007.

**“Post-Closing Portion”** shall have the meaning set forth in Section 10.3.

**“Post-Petition Contracts”** means the Contracts of Seller entered into in the Ordinary Course of Business or approved by the Bankruptcy Court, in either case on or after the Petition Date.

**“Pre-Closing Portion”** shall have the meaning set forth in Section 10.3.

**“Premises”** means the suite of offices leased by PBTCC for the Business at 8081 Royal Ridge Parkway, Suite 130, Irving, TX 75063.

**“Product”** shall mean all products manufactured, marketed or sold and all services sold or otherwise provided by the Business.

**“Purchase Price”** means the payment referred to in Section 4.1.

**“Purchased Intellectual Property”** means all Owned Intellectual Property and Licensed Intellectual Property listed in Schedule 5.1.7.A.

**“Retained Liabilities”** shall have the meaning set forth in Section 2.3.

**“Sale”** means the sale of the Acquired Assets in accordance with the Sale Approval Order.

**“Sale Approval Order”** means an order of the Bankruptcy Court which is in form and substance reasonably acceptable to Seller and Purchaser approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transactions contemplated herein. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (a) pursuant to Section 363(f) of the Bankruptcy Code, the transfers of the Acquired Assets to the Purchaser (i) shall be legal, valid and effective transfers, (ii) shall vest in the Purchaser all of the respective rights, titles and interests of the Seller in and to the Acquired Assets, free and clear of all Liens of any Person whatsoever, known or unknown, fixed, liquidated, contingent or otherwise accruing on or prior to the Closing, such Liens to attach to the Purchase Price, and (iii) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable state laws, (b) Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby, (c) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm’s length bargaining positions, (d) Purchaser is not acquiring or assuming any of Seller’s or any other Person’s liabilities except as expressly provided in this Agreement, (e) all Transferred Contracts shall be assigned to Purchaser pursuant to section 365 of the Bankruptcy Code, (f) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof, (g) this Agreement and the transactions contemplated herein shall be specifically enforceable against and binding upon, and not subject to rejection or avoidance by, each Seller or any trustee of a Seller and its applicable estate (h) the transfer of the Acquired Assets shall be without imposition or payment of any stamp tax, transfer tax or similar tax pursuant to the provisions of Section 1146(c) of the Bankruptcy Code, and (i) the provisions thereof are non-severable and mutually dependent and, pursuant to Bankruptcy Rules 6004(g) and 6006(d) shall not be stayed for 10 days and shall be effective immediately upon entry by the Bankruptcy Court.

“**Sale Motion**” means the motion filed with the Bankruptcy Court on January 31, 2008 seeking entry of the Sale Approval Order.

“**SDN List**” shall have the meaning set forth in Section 5.2.10.

“**Seller’s Knowledge**” or “**Knowledge of Seller**” means, (i) with respect to Sections 5.1.5.B (Condition of Personal Property), 5.1.6 (Litigation) and 5.1.13 (Business Employees), the actual knowledge of Tom Wilkerson and Bradley Hutcherson and, (ii) with respect to Section 5.1.7 (Intellectual Property), the actual knowledge of Nhan Nguyen and Larry Hollowood. In no event shall any of the foregoing individuals be personally liable for any representations or warranties made under this Agreement.

“**Software**” means computer software and programs, including, without limitation, source code, shareware, firmware, middleware, courseware, open source code, operating systems and specifications, system data, record and table layouts, databases, files documentation, storage media, manuals and other materials related thereto.

“**Straddle Period**” means any taxable period that begins on or prior to the Closing Date and ends after the Closing Date.

“**Tax Return**” means any return, declaration, report, claim for refund or information return, or statement, or any other similar filings, related to Taxes, including any Schedule or attachment thereto.

“**Tax(es)**” means any tax or similar governmental charge, impost or levy whatsoever (including, without limitation, income, franchise, transfer taxes, use, gross receipts, value added, employment, excise, ad valorem, property, withholding, payroll, social contribution, customs duty, minimum or windfall profit taxes or transfer fees), together with any related penalties, fines, additions to tax or interest, imposed by the United States or any state, county, local or foreign government or subdivision or agency thereof.

“**Technical Documentation**” means all documented technical information currently in the files of the Seller used exclusively to support the conduct of the Business.

“**Termination Date**” shall have the meaning set forth in Section 9.1.1.D.

“**Third Party Bailed Assets**” shall have the meaning set forth in Section 1.1.2.A.

“**Third-Party Requirements**” shall have the meaning set forth in Section 5.1.3.

“**Trade Secrets**” means: (i) all forms and types financial, business, scientific, technical, economic, manufacturing or engineering information, including patterns, plans, compilations, specifications, tooling, program devices, formulas, designs, prototypes, testing plans, methods, techniques, processes, procedures, programs, customer and vendor lists, pricing and cost data, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing, if: (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public, and confidential technical and business information (including ideas, formulas, compositions, inventions and conceptions of inventions whether patentable or un-patentable and whether or not reduced to practice); (ii) all copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; (iii) all rights to file and apply for, prosecute, defend and enforce any of the foregoing; and (iv)

all rights to sue or recover and retain damages, costs and attorneys' fees for present and past misappropriation of any of the foregoing.

***“Trademark Rights”*** means: (i) trademarks, trade names and service marks; (ii) the good will associated with trademarks, trade names and service marks; (iii) registrations and applications for registration of trademarks, trade names and service marks; (iv) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; 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.

***“Transferred Contracts”*** means the Contracts of Seller to be assigned to Purchaser at Closing as described in Section 2.1.1.

***“Transferred Employees”*** shall have the meaning set forth in Section 3.1.2.

***“United States”*** means the 50 states and the District of Columbia of the United States of America.

***“USA PATRIOT Act”*** shall have the meaning set forth in Section 5.2.10.



**LIST OF SCHEDULES**

<b>SCHEDULE DESIGNATION</b>	<b>SCHEDULE DESCRIPTION</b>
A	Certain Defined Terms
1.1.1	Acquired Assets
1.1.2.A	Bailed Assets
1.1.2.E	Privileged Information and Materials
1.1.2.H	Other Excluded Assets
2.1.1	Transferred Contracts
4.2	Allocation of Purchase Price
5.1.1	Organization and Good Standing
5.1.3	Consents and Approvals
5.1.5.A	Title to Personal Property
5.1.6	Litigation
5.1.7.A	Intellectual Property
5.1.7.B	Intellectual Property Litigation Claims
5.1.7.C	Rights Granted to Third Parties
5.1.7.D	Free and Clear Owned Intellectual Property
5.1.7.E	Excluded Licenses
5.1.8	Insurance
5.1.12	Listed Contracts
5.1.13	Business Employees
6.2.3	Third Party Approvals
7.2.1	Assignment and Assumption Agreement
7.2.2	Bill of Sale

**SCHEDULE 1.1.1  
Acquired Assets**

- The data center located at the Premises;
- the tangible Personal Property located at the Premises;
- all Personal Property owned by or leased to a Seller in connection with the Business located at any outsource partner's location; and
- all Transferred Contracts identified on **SCHEDULE 2.1.1**;
- all Intellectual Property identified on **SCHEDULE 5.1.7.A**; and
- the following equipment:

Asset ID	Vendor	Model	Function
pbt10001i	Dell	Inspiron 8200	Notebook Computer / QA Device
pbt10002i	Dell	MP061	Notebook Computer
pbt10003i	Dell	MP061	Notebook Computer
pbt10004i	Dell	MP061	Notebook Computer
pbt10005i	Dell	MP061	Notebook Computer
pbt10006i	Dell	MP061	Notebook Computer
pbt10007i	Dell	MP061	Notebook Computer
pbt10008i	Dell	MP061	Notebook Computer
pbt10009i	Dell	DXP051	Desktop Computer
pbt10011i	Dell	Inspiron 8600	Notebook Computer / QA Device
pbt10012i	Dell	Inspiron 8200	Notebook Computer / QA Device
pbt10013i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10014i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10018i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10019i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10022i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10023i	Dell	DXP051	Desktop Computer
pbt10028i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10029i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10030i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10033i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10034i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10035i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10036i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10038i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10039i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10040i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10041i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10042i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10043i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10044i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10045i	Cisco	Catalyst 4507	Networking Hardware
pbt10046i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10048i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10049i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10050i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10051i	Dell	PowerEdge 2600	Rack-Mount Server

1072916 v7/SF

US2008 9821.2

pbt10053i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10054i	Dell	PowerEdge 2450	Rack-Mount Server
pbt10055i	Dell	PowerEdge 2450	Rack-Mount Server
pbt10056i	HP	Atalla 10500	Cryptographic Hardware
pbt10057i	HP	Atalla 10500	Cryptographic Hardware
pbt10058i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10059i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10060i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10061i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10072i	Dell	PowerEdge 2450	Rack-Mount Server
pbt10076i	Dell	PowerEdge 2600	Rack-Mount Server
pbt10077i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10077i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10079i	Dell	3007WFP	Operations Display Monitor
pbt10080i	Dell	2005WFP	Desktop Monitor
pbt10081i	Dell	2005WFP	Desktop Monitor
pbt10082i	Dell	2007WFP	Desktop Monitor
pbt10083i	Dell	2007WFP	Desktop Monitor
pbt10084i	Dell	3007WFP	Operations Display Monitor
pbt10085i	Dell	2007WFP	Desktop Monitor
pbt10086i	Dell	2007WFP	Desktop Monitor
pbt10087i	Dell	2005WFP	Desktop Monitor
pbt10088i	Dell	Inspiron 8200	Notebook Computer / QA Device
pbt10089i	Dell	Inspiron 8500	Notebook Computer / QA Device
pbt10091i	Cisco	PIX-515E	Network Security Hardware
pbt10092i	Dell	MP061	Notebook Computer
pbt10094i	Dell	MP061	Notebook Computer
pbt10095i	Dell	MP061	Notebook Computer
pbt10096i	Dell	MP061	Notebook Computer
pbt10097i	Dell	MP061	Notebook Computer
pbt10098i	Dell	MP061	Notebook Computer
pbt10099i	Dell	MP061	Notebook Computer
pbt10100i	Cisco	PIX-515E	Network Security Hardware
pbt10101i	Cisco	PIX-515E	Network Security Hardware
pbt10102i	Cisco	CSS11503-AC	Networking Hardware
pbt10103i	Cisco	VPN3020	Network Security Hardware
pbt10104i	Cisco	Catalyst 2950	Networking Hardware
pbt10105i	Cisco	PIX-515E	Network Security Hardware
pbt10106i	Cisco	PIX-515E	Network Security Hardware
pbt10107i	Cisco	CSS11503-AC	Networking Hardware
pbt10109i	Cisco	PIX-515E	Network Security Hardware
pbt10110i	Cisco	Catalyst 3550	Networking Hardware
pbt10111i	Cisco	Catalyst 2950	Networking Hardware
pbt10112i	Cisco	Catalyst 2950	Networking Hardware
pbt10113i	Cisco	PIX-515E	Network Security Hardware
pbt10114i	Cisco	PIX-515E	Network Security Hardware
pbt10115i	Cisco	VPN3020	Network Security Hardware
pbt10116i	Cisco	Catalyst 2950	Networking Hardware

1072916 v7/SF

US2008 9821.2

pbt10117i	Dell	MP061	Notebook Computer
pbt10118i	Cisco	7206VXR	Networking Hardware
pbt10119i	Cisco	Catalyst 3550	Networking Hardware
pbt10120i	Cisco	Catalyst 2950	Networking Hardware
pbt10121i	Cisco	Catalyst 3550	Networking Hardware
pbt10122i	Cisco	PIX-515E	Network Security Hardware
pbt10123i	Cisco	VPN3020	Network Security Hardware
pbt10125i	Cisco	Catalyst 2950	Networking Hardware
pbt10126i	Cisco	Catalyst 3550	Networking Hardware
pbt10127i	Cisco	PIX-515E	Network Security Hardware
pbt10128i	Cisco	PIX-515E	Network Security Hardware
pbt10129i	Cisco	CSS11503-AC	Networking Hardware
pbt10130i	Cisco	Catalyst 2950	Networking Hardware
pbt10131i	Cisco	Catalyst 3550	Networking Hardware
pbt10132i	Cisco	PIX-515E	Network Security Hardware
pbt10133i	Dell	GX745	Desktop Computer
pbt10134i	Dell	GX745	Desktop Computer
pbt10135i	Dell	PowerEdge 1650	Rack-Mount Server
pbt10136i	Dell	PowerEdge 2650	Rack-Mount Server
pbt10137i	Dell	PowerEdge 2650	Rack-Mount Server
pbt10138i	Dell	MP061	Notebook Computer
pbt10139i	Cisco	Catalyst 3550	Networking Hardware
pbt10140i	Dell	PowerEdge 1850	Rack-Mount Server
pbt10141i	Dell	PowerEdge 1850	Rack-Mount Server
pbt10142i	Dell	PowerEdge 1850	Rack-Mount Server
pbt10177i	Cisco	Catalyst 3550	Networking Hardware
pbt10178i	Cisco	Catalyst 3560	Networking Hardware
pbt10179i	Cisco	Catalyst 3560	Networking Hardware
pbt10180i	ISS	Proventia M10	Network Security Hardware
pbt10181i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10182i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10183i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10184i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10185i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10186i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10187i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10188i	Cisco	CSS11501	Networking Hardware
pbt10189i	Cisco	Catalyst 2950	Networking Hardware
pbt10190i	Cisco	Catalyst 3550	Networking Hardware
pbt10191i	Cisco	Catalyst 3550	Networking Hardware
pbt10193i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10194i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10196i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10197i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10198i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10199i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10200i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10201i	Dell	PowerEdge 1955	Blade-Mounted Server

1072916 v7/SF

US2008 9821.2

pbt10202i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10203i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10204i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10205i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10206i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10207i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10208i	HP	Atalla 10000E	Cryptographic Hardware
pbt10209i	HP	Atalla 10000E	Cryptographic Hardware
pbt10210i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10211i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10212i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10213i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10214i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10215i	Cisco	PIX-515E	Network Security Hardware
pbt10216i	Cisco	PIX-515E	Network Security Hardware
pbt10217i	Cisco	PIX-515E	Network Security Hardware
pbt10218i	Cisco	PIX-515E	Network Security Hardware
pbt10219i	Cisco	Catalyst 3550	Networking Hardware
pbt10220i	Dell	PowerConnect 3424	Networking Hardware
pbt10221i	Dell	PowerConnect 3424	Networking Hardware
pbt10222i	Dell	PowerConnect 3424	Networking Hardware
pbt10223i	Dell	PowerConnect 3424	Networking Hardware
pbt10224i	nCipher	netHSM2000	Cryptographic Hardware
pbt10225i	nCipher	netHSM2000	Cryptographic Hardware
pbt10226i	Dell	PowerEdge 1750	Rack-Mount Server
pbt10227i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10228i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10229i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10230i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10231i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10232i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10233i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10234i	Cisco	CSS11501	Networking Hardware
pbt10235i	Cisco	CSS11501	Networking Hardware
pbt10236i	Cisco	Catalyst 3550	Networking Hardware
pbt10237i	Cisco	VPN3020	Network Security Hardware
pbt10238i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10239i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10240i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10241i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10242i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10243i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10244i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10245i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10246i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10247i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10248i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10249i	Dell	PowerEdge 1855	Blade-Mounted Server

1072916 v7/SF

US2008 9821.2

pbt10250i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10251i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10252i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10253i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10254i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10255i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10256i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10257i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10258i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10259i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10260i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10261i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10262i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10263i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10264i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10265i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10266i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10267i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10268i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10269i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10270i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10271i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10272i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10273i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10274i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10275i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10276i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10277i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10278i	Cisco	Catalyst 2950	Networking Hardware
pbt10279i	nCipher	netHSM2000	Cryptographic Hardware
pbt10280i	nCipher	netHSM2000	Cryptographic Hardware
pbt10281i	Adtran	MX2800 MUX	Telecommunications Hardware
pbt10282i	Cisco	2611 Router	Networking Hardware
pbt10283i	Cisco	2821 Router	IP Telephony Hardware
pbt10284i	Cisco	PIX-515E	Network Security Hardware
pbt10285i	Cisco	Catalyst 3524	Networking Hardware
pbt10286i	Cisco	Catalyst 2950	Networking Hardware
pbt10287i	Cisco	Catalyst 3750	IP Telephony Hardware
pbt10288i	Cisco	Catalyst 3750	IP Telephony Hardware
pbt10289i	Cisco	CSS11503-AC	Networking Hardware
pbt10290i	Cisco	CSS11501	Networking Hardware
pbt10292i	Cisco	Catalyst 3550	Networking Hardware
pbt10295i	Cisco	VPN3020	Network Security Hardware
pbt10296i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10297i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10300i	Cisco	3745 Router	Networking Hardware
pbt10301i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10302i	Cisco	IP Phone 7940G	IP Telephony Hardware

1072916 v7/SF

US2008 9821.2

pbt10303i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10304i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10305i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10306i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10307i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10308i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10309i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10310i	Cisco	CSS11503-AC	Networking Hardware
pbt10311i	Cisco	CSS11501	Networking Hardware
pbt10312i	Cisco	7206VXR	Networking Hardware
pbt10313i	Dell	PowerConnect 3424	Networking Hardware
pbt10314i	Dell	PowerConnect 3424	Networking Hardware
pbt10315i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10316i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10317i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10318i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10319i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10320i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10321i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10322i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10323i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10324i	Cisco	CSS11501	Networking Hardware
pbt10325i	Cisco	Catalyst 3550	Networking Hardware
pbt10326i	Cisco	Catalyst 3550	Networking Hardware
pbt10327i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10328i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10329i	APC	Desktop UPS	Battery Backup Unit
pbt10340i	APC	Desktop UPS	Battery Backup Unit
pbt10341i	APC	Single Rack UPS	Battery Backup Unit
pbt10342i	APC	Single Rack UPS	Battery Backup Unit
pbt10343i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10344i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10345i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10346i	Dell	PowerEdge 1855	Blade-Mounted Server
pbt10347i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10348i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10349i	Cisco	PIX-515E	Network Security Hardware
pbt10350i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10351i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10352i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10353i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10354i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10355i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10356i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10357i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10358i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10359i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10360i	Cisco	IP Phone 7940G	IP Telephony Hardware

1072916 v7/SF

US2008 9821.2

pbt10361i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10362i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10363i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10364i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10365i	Dell	PowerEdge Chassis	Blade-Server Chassis
pbt10366i	ISS	Proventia G100	Network Security Hardware
pbt10367i	ISS	Proventia Gx1002	Network Security Hardware
pbt10368i	Dell	PowerEdge 1955	Blade-Mounted Server
pbt10369i	Cisco	PIX-515E-FO	Network Security Hardware
pbt10370i	Cisco	PIX-515E	Network Security Hardware
pbt10371i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10372i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10373i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10374i	Cisco	IP Phone 7940G	IP Telephony Hardware
pbt10375i	Morse-Watchman	KeyWatcher 3040	Secure Physical Key Storage
pbt10376i	Generac	150KW Generac Generator	Backup Electricity Generator
pbt10377i	APC	80KVA Silicon Battery Unit	Facilities UPS Battery Source
pbt10378i	Diebold	MasterGuard Burglar Safe	On-Site Information Protection
pbt10379i	Cummins	539 High Security Shredder	On-site secure document destruction
pbt10380i	GE	GE Calibur Wavereader	Facilities Video Surveillance and Recording
pbt10381i	DSX	DSX-1040PDP System	Facilities Security System
pbt10382i	Dell	2007WFP	Desktop Monitor
pbt10383i	Dell	2007WFP	Desktop Monitor
pbt10384i	Dell	2007WFP	Desktop Monitor
pbt10385i	Dell	2007WFP	Desktop Monitor
pbt10386i	Dell	2007WFP	Desktop Monitor
pbt10387i	Dell	2007WFP	Desktop Monitor
pbt10388i	Dell	2007WFP	Desktop Monitor
pbt10389i	Dell	2007WFP	Desktop Monitor
pbt10390i	Dell	2007WFP	Desktop Monitor
pbt10391i	Dell	2007WFP	Desktop Monitor
pbt10392i	Dell	2007WFP	Desktop Monitor
pbt10393i	EMC	Storage Processor	SAN Storage Processor
pbt10394i	EMC	Storage Processor	SAN Storage Processor
pbt10395i	EMC	Storage Array	SAN Disk Array
pbt10396i	EMC	Storage Array	SAN Disk Array
pbt10397i	McData	Sphereon 4400	SAN Fiber Channel Switch
pbt10398i	McData	Sphereon 4400	SAN Fiber Channel Switch
pbt10399i	Liebert	ICS - 5Ton	Industrial AC unit for power room
pbt10400i	Liebert	ICS - 10Ton	Industrial AC unit for Data Center



**SCHEDULE 1.1.2.A**

**Bailed Assets**

None.

**SCHEDULE 1.1.2.E**

**Privileged Information and Materials**

None.

**SCHEDULE 1.1.2.H**

**Other Excluded Assets**

The marks “Pay By Touch,” “Solidus” and “TrueMe” and any other marks incorporating such marks, in addition to any other marks not used exclusively in the Business..

Contracts with Verizon and AT&T for telecommunications services.

**SCHEDULE 2.1.1**

**Transferred Contracts**

See Annex I.

**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Cisco SecureACS Authentication Software Cisco Systems, Inc. 170 West Tasman Dr. San Jose, CA 95134	Purchased License Agreement	\$0.00
Encryption Software, Inc. 595 Bellemont Ct. Duluth, GA 30097	License agreement for encryption software.	\$0.00
Fiserv Solutions, Inc. dba Fiserv EFT 250 Johnson Road Morris Plains, NJ 07950	Service agreement dated as of 8/1/07 ("effective date") between Fiserv Solutions, Inc. and ATMD.	\$ 5,734.04
Geopoint Server - Quova, Inc 333 W. Evelyn Avenue Mountain View, CA 94041	Unlimited queries for fixed monthly cost	\$0.00
GWI Soft 10000NE 7th Ave Suite 401 Vancouver, WA 98685	Service Desk	\$0.00
HP Atalla Cryptography and Hardware Security Modules 3000 Hanover St. Palo Alto, CA 94304	Unlimited Use License specific to hardware device	\$0.00
HP/Compaq/Atalla 3000 Hanover Street Palo Alto, CA 94304-1175	License agreement for software.	\$0.00
Idera BBS Technology Inc 802 Lovett Blvd Houston, Tx 77006	Database tools for production systems	\$ 4,536.77
Internet Security Systems IBM North America 590 Madison Avenue New York, NY 10022	Software licenses transfer agreement dated as of December 7, 2005 between Pay by Touch/ATMD and Internet Security Systems.	\$0.00
Iron Mountain Intellectual Property Management Atlanta Processing Office 2100 Norcross Pkwy, suite 150 Norcross, GA 30071  DES Technology Escrow Services, Inc. 9265 Sky Park Court, Suite 202 San Diego, CA 92123	Intellectual Property Development Protection Agreement entered on Feb 10, 2004 between DSI technology Escrow Services, Inc. (a subsidiary of Iron Mountain) and ATMD.	\$ 4,173.53
McAfee, Inc. General Counsel 5000 Headquarters Drive Mail Stop 1S262 Plano, Texas 75024	OEM software License Agreement entered as of July 27, 2007 ("effective date:") between McAfee, Inc and ATMD.	\$0.00

**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Melissa Data 22382 Avenida Empresa Rancho Santa Margarita, CA 92688-2112	License agreement for address reference data software.	\$0.00
Microsoft Visual Studio Development Suite Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399	Limited use license per install	\$0.00
Microsoft Windows Family (2000 Server, 2003 Server, XP, Vista) Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399	Limited use license per install	\$0.00
Mosaic Software 800 Fairway Drive, Suite 198 Deerfield Beach, FL 33441	License agreement for software dated May 16, 2002.	\$ 76,109.89
nCipher Cryptography and Hardware Security Modules 500 Unicorn Park Drive Woburn, MA 01801-3371	Unlimited Use License specific to hardware device	\$0.00
nCipher Inc. 500 Unicorn Park Drive Woburn, MA 01801-3371 nCipher Corporation, Ltd. Jupiter House, Station Road Cambridge CB12JD, England	License agreement for encryption solution software.	\$0.00
NYCE Payments Networkd, LLC 400 Plaza Drive, 2nd floor Secaucus, New Jersey 07094	Data processing services agreement between NYCE Payments Network, LLC and Pay by Touch. Effective date 12/14/2006.	\$ 10,918.73
Postillion Server Software - S1 Corporation 705 Westech Drive Norcross, GA 30092	Limited use license per EFT direct connect	\$0.00
Pulse EFT Association 1301 McKinney, Suite 2500 Huston, TX 77010	Processor sponsoring agreement.	\$ 2,500.00
Quova, Inc. 333 W. Evelyn Avenue Mountain View, CA 94041	License agreement dated January 23, 2003.	\$ 8,000.00
RSA SecurID Authentication 174 Middlesex Turnpike Bedford, MA 01730	Purchased License Agreement	\$745.00
Shamus Software, Inc. 4 Foster Place North Ballybough, Dublin 3 Ireland	Pending License Agreement	\$0.00

**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Star Networks, Inc 1100 Carr Road Wilmington, Delaware 19809	Processor Agreement dated Sept 28, 2006 between Star Networks, Inc. and Solidus.	\$0.00
Verisign, Inc 487 E. Middlefield Road, M/S MV 6-2-1 Mountain View, CA 94043	Digital Certificates (VPN SSL)	\$ 2,480.00

**SCHEDULE 4.2**

**Allocation of Purchase Price**

[To be agreed upon by parties at or following Closing.]



**SCHEDULE 6.2.3**

**Third Party Approvals**

The EFT Networks with which the Business is certified, Fiserv EFT (ACCEL/Exchange), NYCE, PULSE and STAR, and the Business's sponsor bank, Carrollton Bank, will review Purchaser following the consummation of the Sale to confirm Purchaser meets such parties' eligibility criteria.

## SCHEDULE 7.2.1

### ASSUMPTION AGREEMENT

**THIS ASSUMPTION AGREEMENT** is made and entered into as of \_\_\_\_\_, 2008 (the "*Effective Date*"), by and among Solidus Networks, Inc., a Delaware corporation ("*Assignor*") and \_\_\_\_\_ ("*Assignee*").

#### RECITALS

Assignor and Assignee are parties to that certain Asset Sale and Purchase Agreement dated as of the date of this Assumption Agreement (the "*Purchase Agreement*"), pursuant to which Assignee has agreed to acquire from Assignor(s) the Acquired Assets (as defined in the Purchase Agreement) as of the Effective Date. Pursuant to the Purchase Agreement, Assignor has agreed to assign certain rights and agreements to Assignee, and Assignee has agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement) as of the Effective Date, as set forth in the Purchase Agreement. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.

#### AGREEMENT

The parties, intending to be legally bound, agree as follows:

**1. Assignment and Assumption.** Effective as of the Effective Date, Assignor hereby assigns, sells, transfers and sets over (collectively, the "*Assignment*") to Assignee all of the Assumed Liabilities. As of the Effective Date, Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge when due all of the Assumed Liabilities to be observed, performed, paid or discharged from and after the Effective Date. Assignee assumes no liabilities other than the Assumed Liabilities, and the parties agree that all liabilities other than the Assumed Liabilities shall remain the sole responsibility of Assignor.

**2. Terms of the Purchase Agreement.** The terms of the Purchase Agreement, including but not limited to Assignor's representations, warranties, covenants and agreements relating to the Assumed Liabilities and other liabilities, are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants and agreements contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

**3. Further Actions.** Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assumption Agreement.

**4. Miscellaneous.** This Assumption Agreement shall be governed by, and construed in accordance with, the laws of the State of California without giving effect to principles of conflict of laws. This Assumption Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. This Assumption Agreement may not be amended or modified except by an instrument in writing signed by the parties hereto.

**IN WITNESS WHEREOF**, the parties have executed this Assumption Agreement as of the date first above written.

**ASSIGNOR:**

**SOLIDUS NETWORKS, INC.**

Signed: \_\_\_\_\_

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

Its: \_\_\_\_\_

**ASSIGNEE:**

**[NAME]**

Signed: \_\_\_\_\_

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

Its: \_\_\_\_\_

**SCHEDULE 7.2.2**

**GENERAL ASSIGNMENT AND BILL OF SALE**

**THIS GENERAL ASSIGNMENT AND BILL OF SALE (“Bill of Sale”)** is being executed and delivered as of \_\_\_\_\_, 2008 (the “*Effective Date*”), by Solidus Networks, Inc., a Delaware corporation (“*Seller*”), to and for the benefit of \_\_\_\_\_ (“*Purchaser*”).

**RECITAL**

Purchaser and Seller have entered into that certain Asset Sale and Purchase Agreement dated as of \_\_\_\_\_, 2008 (as the same may from time to time be amended, modified, supplemented or restated, the “*Purchase Agreement*”). Capitalized terms used but not defined in this Bill of Sale are defined in the Purchase Agreement.

**AGREEMENT**

Seller, intending to be legally bound, agrees as follows:

1. Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser all Acquired Assets, including all of Seller’s rights, titles and interests in, relating to and under the Acquired Assets, as of the Effective Date.
2. This Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to conflict of laws principles.
3. This Bill of Sale and all of the provisions hereof shall be binding upon Seller and inure to the benefit of Purchaser and its successors and assigns.
4. Nothing contained in this Bill of Sale shall be deemed to limit any right or obligation of Purchaser under the Purchase Agreement.

**IN WITNESS WHEREOF**, Seller has executed this General Assignment and Bill of Sale as of the date first written above.

**SOLIDUS NETWORKS, INC.**

Signed: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SOLIDUS NETWORKS, INC.**

**DISCLOSURE SCHEDULES**

\_\_\_\_\_, 2008

These Disclosure Schedules are delivered in connection with that certain Asset Sale and Purchase Agreement dated as of \_\_\_\_\_, 2008 (the "Agreement") by and between Accullink, LLC, a Delaware limited liability company, and Solidus Networks, Inc., a Delaware corporation. Capitalized terms used but not defined herein shall have the same meanings given them in the Agreement.

No reference to or disclosure of any item or other matter in these Disclosure Schedules shall be construed as an admission or indication that such item or other matter is material. With respect to any third party claims, no disclosure in these Disclosure Schedules relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The bold-faced headings contained in these Disclosure Schedules are included for convenience only, and are not intended to limit the effect of the disclosures contained in this Schedule or to expand the scope of the information required to be disclosed in these Disclosure Schedules.

**SCHEDULE 5.1.1**

**Organization and Good Standing**

None.

**SCHEDULE 5.1.3**

**Consents and Approvals**

The EFT Networks with which the Business is certified, Fiserv EFT (ACCEL/Exchange), NYCE, PULSE and STAR, and the Business's sponsor bank, Carrollton Bank, will review Purchaser following the consummation of the Sale to confirm Purchaser meets such parties' eligibility criteria.

**SCHEDULE 5.1.5.A**

**Title to Personal Property**

None.



**SCHEDULE 5.1.6**

**Litigation**

**[THE FOLLOWING INFORMATION IS CONFIDENTIAL AND HAS BEEN FILED UNDER  
SEAL.]**

**SCHEDULE 5.1.7.A  
Intellectual Property**

**Trademarks:**

Mark	Country	Type	Status	Reg. No.	Reg. Date	App. No.	Filing Date	Class	Goods and Services
ATM DIRECT	United States	text	ABANDONED	NA	NA	76222741	03/09/2001	9, 42	Class 9: downloadable computer software for accessing bank account information and processing financial information; Class 42: services providing for the temporary use of on-line non-downloadable software and network which provide access to and process financial information over a global communication network
ATM DIRECT	United States	text	REGISTERED	3357554	12/18/2007	78779418	12/22/2005	9, 42	Class 9: Downloadable computer software for accessing bank account information and processing financial information; Class 42: Services providing for the temporary use of on-line non-downloadable software and network which provide access to and process financial info
ONBOARD	United States	text	ABANDONED	NA	NA	77091874	01/26/2007	9	Software for providing online security protection during financial and non-financial transactions and enabling receipts of targeted offers
ONBOARD	European Council	text	ABANDONED	NA	NA	NA	NA	NA	NA
PAYSECURE	United States	text	ALLOWED	NA	NA	77108732	02/15/2007	36	Online credit card, debit card and automated clearing house payment processing and authentication services
PAYSECURE	European Council	text	TO BE ABANDONED	NA	NA	6237234	08/15/2007	36	Online credit card, debit card and ACH payment processing and authentication services
SECUREME	United States	text	ABANDONED	NA	NA	77091891	01/26/2007	42	Providing online security protection during financial and non-financial transactions
SECUREME	European Council	text	ABANDONED	NA	NA	NA	NA	NA	NA

1072916 v7/SF

US2008 9821.2

**Patents/Patent Applications:**

Country	Title	Pat./Pub. No.	Issue/Pub Date	Stage	App. No.	Filing Date
United States	Secure data entry and visual authentication system and method	6,209,104	3/27/01	Patent*	08/980,748	12/1/97
United States	Secure PIN Management	20050055318	3/10/05	App.	10/764,988	1/26/04
United States	System and Methods for Processing PIN-Authenticated Transactions	20040044739	3/4/04	App.	10/264,762	10/4/02
United States	Secure Key Entry Using a Graphical Interface	20020188872	12/12/02	App.	09/874,274	6/6/01
United States	System and Method for Online ATM Transaction with Digital Certificate	20050085931	4/21/05	App.	10/375,290	2/27/03
United States	Method and System for Lottery Transactions over an Open Network	20050153779	7/14/05	App.	11/005,499	12/4/04
United States	System and Method of Secure Information Transfer	20050194438	9/8/05	App.	11/010,191	12/11/04
United States	Method and System of Authentication on an Open Network	20060123465	6/8/06	App.	11/241,870	10/1/05
United States	System and Method for Electronic Check Verification over a Network	20060136332	6/22/06	App.	11/241,862	10/1/05
WO	Method and System of Authentication on an Open Network	WO/06/039365	4/13/06	App.	PCT/US2005/034923	10/1/05
WO	System and Method for Electronic Check Verification Over a Network	WO/06/039364	4/13/06	App.	PCT/US2005/034922	10/1/05
Europe	Secure Pin Management			App.	3816988	9/4/03

1072916 v7/SF

US2008 9821.2

Country	Title	Pat./Pub. No.	Issue/Pub Date	Stage	App. No.	Filing Date
Brazil	Method and System for Lottery Transactions and Open Network	PCT/US2004/040534		App.	PCT/US2004/040534	12/6/04
Canada	Method and System for Lottery Transactions and Open Network			App.	2548533	12/6/04
China	Method and System for Lottery Transactions and Open Network			App.	PCT/US2004/040534	12/6/04
Republic of Korea	Method and System for Lottery Transactions and Open Network			App.	10-2006-7013092	12/6/04
Australia	Method and System for Lottery Transactions and Open Network	2004297986	6/7/06	App.	2004297986	12/6/04
Brazil	System and Method of Secure Information Transfer	417547-6		App.	PCT/US2004/41557	12/6/04
Canada	System and Method of Secure Information Transfer			App.	2549379	12/11/04
China	System and Method of Secure Information Transfer			App.	200480041054.7	12/11/04
Europe	System and Method of Secure Information Transfer	04 818004.6		App.	PCT/US2004/41557	12/11/04
Mexico	System and Method of Secure Information Transfer			App.	PA/a/2006/006588	12/11/04
WO	Method and System for Lottery Transactions and Open Network	WO/05/057348	6/23/05	App.	PCT/US2004/040534	12/6/04
WO	System and Method of Secure Information Transfer	WO/05/060630	7/11/05	App.	PCT/US2004/041557	12/11/04

1072916 v7/SF

US2008 9821.2

Country	Title	Pat./Pub. No.	Issue/Pub Date	Stage	App. No.	Filing Date
China	Method and System for Lottery Transactions and Open Network			App.	200480040617.0	12/6/04
Australia	System and Method of Secure Information Transfer	2004305043	7/6/06	App.	2004305043	12/11/04
Korea	Method and System for Lottery Transactions and Open Network			App.	1020067013092	12/6/04
Mexico	Method and System for Lottery Transactions and Open Network			App.	PA/a/2006/006393	12/6/04

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US2008 9821.2

**TRADEMARK  
REEL: 005983 FRAME: 0762**

**SCHEDULE 5.1.7.B**

**Intellectual Property Litigation Claims**

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SEAL.]**

**SCHEDULE 5.1.7.C**

**Rights Granted to Third Parties**

None.



**SCHEDULE 5.1.7.D**

**Free and Clear Owned Intellectual Property**

None.

**SCHEDULE 5.1.7.E**

**Excluded Licenses**

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SEAL.]**

**SCHEDULE 5.1.8**

**Insurance**

**[THE FOLLOWING INFORMATION IS CONFIDENTIAL AND HAS BEEN FILED UNDER  
SEAL.]**

**SCHEDULE 5.1.12**

**Listed Contracts**

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SEAL.]**

**SCHEDULE 5.1.13**

**Business Employees**

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SEAL.]**

# **EXHIBIT B**

**ASSET SALE AND PURCHASE AGREEMENT**

**BETWEEN**

**SOLIDUS NETWORKS, INC.,**

**AS SELLER,**

**AND**

\_\_\_\_\_  
\_\_\_\_\_  
**ACCULLINK, LLC**

**Dated as of \_\_\_\_\_, February 22, 2008**

**TABLE OF CONTENTS**

	<b>PAGE</b>
1. CONVEYANCE OF THE ACQUIRED ASSETS:.....	1
1.1 Acquired Assets Transaction.....	1
2. ASSUMPTION OF LIABILITIES:.....	3
2.1 Assumed Liabilities.....	3
2.2 No Expansion of Third Party Rights.....	4
2.3 Retained Liabilities.....	4
2.4 <u>Contract Designation</u> .....	<u>4</u>
3. <del>ACQUIRED ASSETS</del> ; PERSONNEL MATTERS; TRANSFERRED EMPLOYEES.....	4
3.1 Business Employees.....	4
3.2 Cooperation.....	5
3.3 No Third Party Rights.....	5
4. PURCHASE PRICE:.....	5
4.1 Purchase Price; Deposit Amount.....	5
4.2 Allocation of Purchase Price.....	5
5. REPRESENTATIONS AND WARRANTIES:.....	6
5.1 Representations and Warranties of Seller.....	6
5.2 Representations and Warranties of Purchaser.....	9
5.3 Survival of Representations, Warranties and Covenants of Seller and Purchaser.....	11
6. CONDITIONS TO CLOSING:.....	11
6.1 Conditions to Obligations of Seller and Purchaser.....	11
6.2 Conditions to Obligations of Purchaser.....	11
6.3 Conditions to Obligations of Seller.....	12
7. CLOSING:.....	12
7.1 The Closing.....	12
7.2 Ancillary Agreements.....	<del>13</del> <u>12</u>
7.3 Seller's Deliveries.....	13
7.4 Purchaser's Deliveries.....	13
8. CERTAIN ADDITIONAL COVENANTS:.....	13
8.1 Bankruptcy Actions:.....	13
8.2 Registrations, Filings and Consents; Further Actions.....	<del>13</del> <u>14</u>
8.3 Operation of the Business Pending Closing:.....	14
8.4 Assumed Contracts; Cure Amounts.....	14
8.5 Post-Closing Covenants.....	14
8.6 Certain Transactions.....	<del>15</del> <u>16</u>
8.7 Communications with Customers and Suppliers.....	16
<u>8.8 Cooperation</u> .....	<u>16</u>
<u>8.9 Removal of Assets</u> .....	<u>16</u>
<u>8.10 Consents; Failure to Obtain Consents</u> .....	<u>16</u>



**TABLE OF CONTENTS**  
(CONTINUED)

	<b>PAGE</b>
9. TERMINATION:	<u>1617</u>
9.1 Termination	<u>1617</u>
9.2 Notice of Termination	<u>17</u>
9.3 Procedure and Effect of Termination	<u>1718</u>
10. OTHER TAX MATTERS:	<u>1718</u>
10.1 Tax Returns for Pre-Closing Period	<u>1718</u>
10.2 Tax Returns for Post-Closing Period	<u>1718</u>
10.3 Straddle Period	<u>1718</u>
10.4 Cooperation	<u>1819</u>
10.5 Tax Elections	<u>1819</u>
11. MISCELLANEOUS:	<u>1819</u>
11.1 Bulk Sales Laws	<u>1819</u>
11.2 Notices	<u>1819</u>
11.3 Assignment	<u>1920</u>
11.4 Entire Agreement	<u>1920</u>
11.5 Waiver	<u>1920</u>
11.6 Severability	<u>1920</u>
11.7 Amendment	<u>1920</u>
11.8 Expenses	<u>1920</u>
11.9 Third Parties	<u>1920</u>
11.10 Headings	<u>1921</u>
11.11 Counterparts	<u>2021</u>
11.12 Governing Law	<u>2021</u>
11.13 Public Announcements	<u>2021</u>
11.14 Sales or Transfer Taxes	<u>2021</u>
11.15 Venue and Retention of Jurisdiction	<u>2021</u>
11.16 Risk of Loss	<u>2021</u>
11.17 Enforcement of Agreement	<u>2021</u>
11.18 Dispute Resolution	<u>2021</u>
11.19 No Right of Setoff	<u>2022</u>
11.20 Limitation on Damages	<u>2122</u>

## ASSET SALE AND PURCHASE AGREEMENT

THIS ASSET SALE AND PURCHASE AGREEMENT (this “*Agreement*”) dated as of February 22, 2008, is entered into by and between (i) ACCULLINK, LLC, a Delaware limited liability company (“*Purchaser*”), and (ii) SOLIDUS NETWORKS, INC., a Delaware corporation, dba Pay By Touch, ~~aka~~ Pay by Touch Solutions (“*Seller*”). Certain capitalized terms in this Agreement are defined on Schedule A.

### RECITALS

- A. Seller is engaged in the Business.
- B. On October 31, 2007, an involuntary chapter 11 bankruptcy petition was commenced against Seller in the United States Bankruptcy Court for the Central District of California, Los Angeles Division, (the “*Bankruptcy Court*”) case number 07-20027-TD. On December 14, 2007, Seller consented to the entry of an order for relief.
- C. On February 22, 2008, the Bankruptcy Court entered an order (I) approving bidding procedures for the sale of the Business, (II) approving the form and manner of notice, (III) scheduling an auction and sale hearing, and (IV) approving procedures for determining cure amounts (the “*Bidding Procedures Order*”).
- D. Upon the terms and subject to the conditions set forth in this Agreement, and as authorized under Sections 363 and 365 of the Bankruptcy Code, Seller desires to sell to Purchaser all right, title and interest of Seller in and to the Acquired Assets and Purchaser desires to make such purchase, subject to Purchaser’s assumption of the Assumed Liabilities and the conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises, mutual promises, representations, warranties and covenants contained in this Agreement and other good and valuable consideration, and intending to be legally bound hereby, the Parties agree:

#### 1. CONVEYANCE OF THE ACQUIRED ASSETS:

**1.1 Acquired Assets Transaction.** Upon the terms and subject to the conditions set forth in this Agreement, at Closing Seller shall sell, transfer, assign, convey and deliver to the Purchaser, and Purchaser shall purchase, accept and acquire from Seller, free and clear of all Liens except: (i) Permitted Liens; and (ii) Liens included in the Assumed Liabilities assumed by Purchaser pursuant to Article 2, if any, all of the assets and properties described in Section 1.1.1 below (collectively, the “*Acquired Assets*”), subject in each case to Section ~~1.1.2~~ 1.1.2, wherever located, and whether or not reflected on the applicable records of Seller.

**1.1.1 Acquired Assets.** The Acquired Assets consist of substantially all of Seller’s right, title and interest in and to the rights and assets used ~~exclusively to support~~ solely or primarily by or in connection with the conduct of the Business (other than the Excluded Assets), including, without limitation:

A. **Personal Property.** ~~Permits, Inventory, rights under.~~ The Personal Property listed on SCHEDULE 1.1.1.

B. **Permits.** ~~The Permits and pending applications therefore and renewals thereof.~~

C. **Inventory.** ~~The Inventory.~~

D. **Transferred Contracts.** ~~The Transferred Contracts and all rights under such Transferred Contracts (including Seller's rights against third party manufacturers to the extent any liability is assumed by Purchaser pursuant to Section 2.1), Administrative Assets and Purchased Intellectual Property (including Trademark Rights in Seller's,~~

E. **Administrative Assets.** ~~Administrative Assets.~~

E. **Purchased Intellectual Property.** ~~Purchased Intellectual Property and goodwill associated with both the Purchased Intellectual Property and the Business, including all Seller's Trademark Rights in product and service names and any derivatives thereof relating to the Business (whether as a trade name, entity name or otherwise), but not including Pay By Touch, Solidus, Solidus Networks and related names), in each case if such assets are used exclusively to support the conduct of the Business, including, without limitation, all related names).~~

G. **Prepaid Assets.** ~~Any prepaid expenses and deposits, deferred charges, advance payments, security deposits and prepaid items, in each case, as they relate to the Acquired Assets or Assumed Liabilities.~~

H. **Claims.** ~~All claims, warranties, choses in action, causes of action, rights of recovery and rights of set-off of any kind against third parties relating to the Business or the Acquired Assets or the Assumed Liabilities, and the right to receive and retain mail and other communications relating to the Business, the Acquired Assets or the Assumed Liabilities.~~

I. **Insurance Benefits.** ~~All insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets acquired by Purchaser or the Assumed Liabilities prior to the Effective Time, unless expended in accordance with this Agreement.~~

J. **Other Assets.** ~~All of Seller's rights in the assets identified on SCHEDULE 1.1.1, other assets identified on SCHEDULE 1.1.1.~~

1.1.2 **Excluded Assets.** ~~Notwithstanding anything to the contrary in this Agreement or in any Ancillary Agreement, the following properties and assets shall not be included in the Acquired Assets, and Purchaser will not be deemed to purchase or acquire any of such assets or properties:~~

A. **Bailed Assets.** ~~Any machinery, equipment, tools and Inventory owned by any other third party listed in SCHEDULE 1.1.2.A ("Third Party Bailed Assets").~~

B. **Personnel and Medical Records.** ~~All work histories, personnel and medical records of employees and former employees of Seller who worked at any time for any reason at the Business for whom a record exists at the Business at the time of Closing; provided, however, so far as legally permissible under applicable data protection, medical confidentiality or similar Laws: Purchaser will be provided the originals of all personnel and medical records of employees of Seller who have accepted employment with Purchaser in connection with the sale hereunder, with the prior written consent~~

of such employee or after posted written notice or other appropriate notice to such employees if legally required. If an employee objects to provision of personnel or medical records to Purchaser, the records will not be provided.

**C. Certain Financial Assets.** Cash, cash equivalents, bank accounts and all accounts receivable.

**D. Tax Refunds.** Any refund of Taxes paid, or claim for refund of Taxes paid, of any kind relating to the Acquired Assets for any period prior to the Closing Date.

**E. Privileged Information and Materials.** Information and materials protected by the attorney-client privilege or that Seller considers to be proprietary information; and the lack of which excluded information and materials are not material to the operation of the Business, and provided that such materials are listed on **SCHEDULE 1.1.2.E** hereto.

**F. Insurance.** ~~The benefit of any of~~Except to the extent specified in Section 1.1.1(I), Seller's or Seller's Affiliates' insurance policies relating to the operation of the Business (including any right to proceeds thereunder).

**G. Certain Rights.** All of the rights and claims of Seller available to Seller ~~(i) under (i)~~ the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551, inclusive, and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections by operation of ~~law~~Law or otherwise, including any and all proceeds of the foregoing and ~~(ii) relating to any litigation or other proceeding, whether in process, contemplated or otherwise, all claims, warranties, choses in action, causes of action, rights of recovery and rights of set-off of any kind against third parties~~ to the extent relating to ~~facts, circumstances or matters that existed prior to the Closing Date, including any and all proceeds of the foregoing~~the Excluded Assets or Retained Liabilities, and the right to receive and retain mail and other communications relating to the Excluded Assets or Retained Liabilities.

**H. Other Excluded Assets.** All computer hardware, equipment and other assets listed on **SCHEDULE 1.1.2.H**.

**1.1.3 Post-Closing Asset Deliveries.** Should Seller or Purchaser, in their reasonable discretion, determine after the Closing that books, records or other similar materials constituting Acquired Assets are still in the possession of Seller, Seller shall promptly deliver them to Purchaser at no cost to Purchaser. Should Seller or Purchaser, in their reasonable discretion, determine after the Closing that books, records or other materials constituting Excluded Assets were delivered to Purchaser, Purchaser shall promptly return them to Seller at no cost to Seller other than reimbursing Purchaser's reasonable out-of-pocket costs and expenses.

**1.1.4 Pro-rations:**

**A.** ~~To the extent that Seller has made any payment relating to the Business prior to the Closing Date with respect to any item listed in Subparagraph B below relating to periods on or following the Closing Date, Purchaser shall reimburse Seller on a per diem basis; and~~

**B.** ~~To the extent Purchaser makes any payment relating to the Business following the Closing Date with respect to any item listed below relating to periods prior to the Closing Date, Seller shall reimburse Purchaser on a per diem basis, in each case for the following:~~

~~(i) Rent for the Premises and copier leases and other pre paid amounts under Transferred Contracts (such other prepaids to be mutually agreed by the parties before Closing);~~

~~(ii) Personal, real property and other ad valorem Taxes, allocated in accordance with local custom;~~

~~(iii) Water, wastewater treatment, sewer charges and other similar types of charges with respect to the Business; and~~

~~(iv) Electric, fuel, gas, telephone and internet services and other utility charges.~~

~~C. Further Assurance. The parties will use commercially reasonable efforts to determine the amounts of the above pro rations and settle such amounts at Closing. To the extent that, within 60 days after Closing, Seller, on the one hand, or Purchaser, on the other hand, receives any bill or other invoice for any of the items listed in this Section 1.1.4 or similar items, relating to both pre Closing and post Closing periods, Seller or Purchaser shall, as soon as practicable but no later than 90 days after Closing, send any such bill or invoice to the other Party. If necessary to avoid incurring interest, penalties and/or late charges, Purchaser may pay all amounts shown to be due thereon, and may invoice Seller for all amounts owed by Seller thereunder, and in such case Seller shall reimburse such amounts.~~

~~Any payments due under this Section 1.1.4 that have not been settled at Closing shall be made within 45 days after the end of the month in which a bill or invoice is sent to a Party (or Affiliate thereof); provided, however, that the disputed portion of any such item shall be paid within 45 days after the final determination thereof on an item by item basis. When Purchaser makes a payment to a third party which is required to be reimbursed to Purchaser by Seller, the reimbursement payment shall be considered the repayment of an advance.~~

## 2. ASSUMPTION OF LIABILITIES:

**2.1 Assumed Liabilities.** At and as of the Closing, Purchaser shall assume and agree to pay, perform and discharge as and when due, and shall be liable with respect to, all obligations, liabilities and responsibilities specifically referred to in this Section 2.1 to the extent arising from or related to the Products or Business ("*Assumed Liabilities*"), other than the Retained Liabilities, as follows:

**2.1.1** The obligations of Seller ~~to be performed~~ arising after the Closing under the Contracts listed on SCHEDULE 2.1.1 (the "*Transferred Contracts*") and the obligations of Seller ~~to be performed~~ arising after the Closing under the licenses and Permits included in the Acquired Assets that are assigned ~~or otherwise transferred~~ to Purchaser pursuant to this Agreement and listed on SCHEDULE 2.1.1.

**2.1.2** ~~Obligations described in Article 3 of this Agreement with respect to Transferred Employees.~~

**2.1.2** ~~2.1.3~~ The obligation to pay for assets, goods or services ordered by Seller on or prior to the Closing ~~and~~ that are received by the Purchaser after Closing.

~~2.1.3~~ ~~2.1.4~~ Liabilities and obligations arising out of, resulting from, or relating to sales pursuant to Transferred Contracts of ~~products~~ Products or services by the Business, including all Product warranty; and Product returns, Product liability (other than design defects) and Product recall liability related thereto product liability and product recall liability claims relating to Products or services by the Business to the extent such obligation results from or arises out of events, factors or circumstances occurring or existing on or prior to the Closing, notwithstanding that the date on which any legal action is commenced or made is after the Closing).

**2.2 No Expansion of Third Party Rights.** The assumption by Purchaser of the Assumed Liabilities shall in no way expand the rights or remedies of any third party against Purchaser or Seller as compared to the rights and remedies that such third party would have had against Seller absent the Bankruptcy Case, had Purchaser not assumed such Assumed Liabilities. Without limiting the generality of the preceding sentence, the assumption by Purchaser of the Assumed Liabilities shall not create any third-party beneficiary rights other than with respect to the Person that is the obligee of such Assumed Liability.

**2.3 Retained Liabilities.** Notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume or be deemed to have assumed, and shall have no liability or obligation with respect thereto, any other liabilities of the Company (collectively, "**Retained Liabilities**") including without limitation the following: (i) liabilities in respect of employment or services performed on or prior to the Closing; ~~(ii) existing, including any and all liabilities whatsoever arising in connection with any employee benefit plan maintained by Seller;~~ (ii) any litigation for which a claim has been made to or threatened in writing against Seller on or before the Closing Date, whether or not set forth on SCHEDULE 5.1.6; (iii) all Tax liabilities of Seller for all periods, including any Tax liabilities allocated to Seller pursuant to Section 10.3 (but excluding any Tax liabilities allocated to Purchaser pursuant to Section 10.3 of this Agreement); (iv) any liability or obligation of Seller for administrative fees and expenses, including, without limitation, any claims arising under Section 503(b) of the Bankruptcy Code; (v) any liability or obligation of Seller for transaction fees and expenses and fees and expenses payable to lenders, brokers, financial advisors, legal counsel, accountants and other professionals in connection with this Agreement; (vi) all Claims, except for Assumed Liabilities; (vii) all liabilities to employees of Seller who are not Transferred Employees or (viii) any liability or obligation not expressly assumed pursuant to Section 2.1 hereof.

**3. ACQUIRED ~~ASSETS;~~ ~~PERSONNEL~~ MATTERS;  
TRANSFERRED EMPLOYEES.**

**3.1 Business Employees.** Listed on SCHEDULE 5.1.13 are all employees and consultants of Seller that perform services exclusively for the Business (each employee required to be so listed a "**Business Employee**"). With respect to each such employee and consultant (as limited in definition for purposes of this Article 3 only) included thereon, SCHEDULE 5.1.13 lists: (i) each such person's title or job/position and (ii) each such person's job designation (*i.e.*, salaried or contract).

**3.1.1** Not later than the Closing Date, Purchaser will offer employment to all Business Employees (other than as set forth on SCHEDULE 5.1.13) with such new employment to commence (if accepted) with effect from the Closing and will confirm the list of such employees to Seller promptly thereafter.

~~3.1.2~~ ~~Purchaser's offer of employment described in Section 3.1.1 will be on terms and conditions that are substantially comparable in all material respects to the terms and conditions of their employment with Seller immediately prior to Closing. Purchaser shall give each such employee credit for time previously employed by Seller for all purposes. Any Business Employee that accepts and commences~~

employment with Purchaser pursuant to a written offer letter with Purchaser shall be referred to herein as a "*Transferred Employee*".

**3.2 Cooperation.** Seller and Purchaser will provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this Article 3.

**3.3 No Third Party Rights.** No provision of this Agreement confers rights or remedies upon any person, including Transferred Employees, other than the Parties.

**4. PURCHASE PRICE:**

**4.1 Purchase Price; Deposit Amount.** Subject to the terms and conditions of this Agreement, in consideration of the Sale, the aggregate purchase price for the Acquired Assets shall be the amount of: (a) \$600,000; plus (b) assumption of the Assumed Liabilities. The final aggregate purchase price, as so determined, is referred to herein as the "*Purchase Price*".

**4.1.1 Deposit Amount.** Upon execution of this Agreement, Purchaser shall deposit with Seller, in a segregated, Lien-free account, \$30,000 in immediately available funds (such amount, together with the interest accrued thereon prior to the Closing, the "*Deposit Amount*"), to be released in accordance with the following procedures:

**A.** If the Closing occurs, the Deposit Amount shall be retained by Seller and applied towards the Purchase Price.

**B.** Upon any termination pursuant to Section 9.1.2, Seller shall retain the Deposit Amount and may transfer the Deposit Amount out of the segregated account.

**C.** Upon termination of this Agreement for any other reason, Seller shall deliver the Deposit Amount, by wire transfer of immediately available funds, to an account designated by Purchaser, to be retained by Purchaser.

**4.1.2 Delivery of Purchase Price.** At the Closing, Purchaser shall pay to Seller, an aggregate amount equal to the Purchase Price less the Deposit Amount (apportioned pursuant to the allocation referred to in Section 4.2) by wire transfer in immediately available funds to an account specified by ~~Sellers.~~ Seller. All amounts paid by Purchaser pursuant to this Section 4.1 shall be credited against the Purchase Price, and upon delivery of any such payments by Purchaser, Purchaser's obligation to pay the Purchase Price will be deemed satisfied and discharged to the extent of such payments. Under no circumstances will Purchaser be liable to Seller or any other Person for any action, omission or delay of Seller in dealing with any payment made by Purchaser in accordance herewith.

**4.2 Allocation of Purchase Price.** The Parties agree to allocate the Purchase Price among the Business and the agreements provided herein for transfer of the Business to Purchaser, for all purposes (including financial, accounting and tax) (the "*Allocation*") in a manner consistent with the Allocation Schedule set forth in **SCHEDULE 4.2** to be mutually agreed upon by Purchaser and Seller in accordance with Section 1060 of the Internal Revenue Code based on the fair market value of the Acquired Assets. Purchaser shall provide to Seller a draft Allocation within 15 days following the Closing Date. This Allocation shall become final and binding on the ~~parties~~ Parties, unless Seller notifies Purchaser within 15 days after receipt of such Allocation of Seller's disagreement with such Allocation. In the event Seller timely notifies Purchaser of such disagreement, the ~~parties~~ Parties shall resolve such disagreement in the manner described in Section 11.18 of this Agreement. Purchaser and Seller shall

each report the federal, state and local income and other Tax consequences of the purchase and sale contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Internal Revenue Code (or any successor form or successor provision of any future tax law~~Law~~) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable law~~Law~~. Seller shall provide Purchaser and Purchaser shall provide Seller with a copy of any information required to be furnished to the Secretary of the Treasury under Internal Revenue Code Section 1060.

**5. REPRESENTATIONS AND WARRANTIES:**

**5.1 Representations and Warranties of Seller.** ~~All information set forth in the Disclosure Schedules with respect to any clause of this Section 5.1 shall be deemed disclosed under and incorporated into any other clause of this Section 5.1 as to which it is reasonably apparent that such disclosure relates based solely on the language in such disclosure and such other clause.~~ Seller represents and warrants to Purchaser as follows:

**5.1.1 Organization and Good Standing.** Except as otherwise set forth on **SCHEDULE 5.1.1**, Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware, and has all requisite corporate power and, subject to any required Bankruptcy Court approval, authority to own, lease and operate its properties and assets and to carry on the Business as presently conducted, and is in good standing in all jurisdictions in which it owns or leases real property, except where the failure so to qualify or to be so licensed would not have a Material Adverse Effect.

**5.1.2 Corporate Power; Due Authorization.** Seller has the corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements, subject to Bankruptcy Court approval, to which it is a party, and to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated herein and therein. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation of the contemplated transactions have been duly authorized by all necessary action on the part of Seller. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement and the Ancillary Agreements have been duly and validly executed and delivered by or on behalf of Seller and (assuming this Agreement constitutes a valid and binding obligation of Purchaser) each such agreement constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and to general equitable principles.

**5.1.3 Consents and Approvals.** No consent, approval, authorization of, declaration, filing or registration with any domestic or foreign government or regulatory authority or any other third party is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements (including the assignment of all Transferred Contracts and all Purchased Intellectual Property), except for: (a) consents, approvals, authorizations of, declarations or filings with, the Bankruptcy Court that have been made or obtained, or will be made or obtained prior to the Closing, including resolution of any outstanding security interests; and (b) consents, approvals, authorizations, declarations, filings and registrations set forth on **SCHEDULE 5.1.3**, the lack of which would not have a Material Adverse Effect. The items referred to in clauses (a) and (b) of this Section 5.1.3 are hereinafter referred to as the "**Third-Party Requirements**."



**5.1.4** [Reserved.]

**5.1.5 Personal Property; Condition of Personal Property:**

**A. Title to Personal Property.** Upon entry by the Bankruptcy Court of the Sale Approval Order, Seller shall transfer the Acquired Assets free and clear of any Lien, except as otherwise expressly indicated on **SCHEDULE 5.1.5.A**.

**B. Condition of Personal Property.** To Seller's Knowledge, the Personal Property included in the Acquired Assets is in such condition (considering age and purpose for which used) as to enable the Business to be conducted as currently conducted without material disruption.

**5.1.6 Litigation.** Except for the pendency of the Bankruptcy Case and any Claims referred to in **SCHEDULE 5.1.6**, there is no suit, action, proceeding or, to Seller's Knowledge, investigation (whether at law or equity, before or by any federal, state or foreign commission, court, tribunal, board, agency or instrumentality, or before any arbitrator) pending related to the Acquired Assets.

**5.1.7 Intellectual Property Assets:**

**A. SCHEDULE 5.1.7.A** sets forth a true and complete list of (1) each patent, trademark registration, copyright registration, domain name registration, and application therefor included in the Owned Intellectual Property included in the Acquired Assets and (2) all material Licensed Intellectual Property included in the Acquired Assets. To Seller's Knowledge there are no material impediments to the ability of Seller under applicable Laws to maintain in effect or renew, in all material respects, its rights in and to the Owned Intellectual Property included in the Acquired Assets. Except as set forth on **SCHEDULE 5.1.3** and/or **SCHEDULE 6.2.3**, to Seller's Knowledge there are no material impediments to the ability of Seller under applicable Law to grant to Purchaser, in all material respects, by license or assignment the rights to the Licensed Intellectual Property included in the Acquired Assets as contemplated in this Agreement.

**B.** To Seller's Knowledge, Seller is conducting the Business in a manner that does not violate the intellectual property right of another Person and no Claim has been made by any third party against Seller of Intellectual Property infringement or misappropriation resulting from the operation of the Business, except as set forth in **SCHEDULE 5.1.7.B**.

**C.** Seller has not granted any license, sublicense or other permission to use the Owned Intellectual Property included in the Acquired Assets to any third party, except as set forth on **SCHEDULE 5.1.7.C**.

**D.** Except as set forth on **SCHEDULE 5.1.7.D**: (1) all Owned Intellectual Property included in the Acquired Assets is owned solely and exclusively by Seller; and (2) upon entry by the Bankruptcy Court of the Sale Approval Order, Seller shall transfer the Owned Intellectual Property included in the Acquired Assets free and clear of any encumbrances thereon.

**E.** Except as set forth on **SCHEDULE 5.1.7.E**, no Owned Intellectual Property included in the Acquired Assets or any Product that contains any Owned Intellectual Property included in the Acquired Assets is, in whole or in part, governed by an Excluded License. For purposes of this Agreement, an "**Excluded License**" means any license that requires, as a condition of modification and/or distribution of software subject to the Excluded License, that: (1) such software and/or other software combined and/or distributed with such software be disclosed or distributed in source code form or (2) such software and/or other software combined and/or distributed with such software and any

associated intellectual property be licensed on a royalty free basis (including for the purpose of making additional copies or derivative works).

**5.1.8 Insurance.** SCHEDULE 5.1.8 contains a complete and correct list, in all material respects, of all material policies of insurance included in the Acquired Assets, indicating for each policy the carrier, risks insured, the amounts of coverage, deductible, expiration date and any material pending claims thereunder. All such policies are outstanding and in full force and effect.

**5.1.9 Compliance with Permits.** All Permits that are necessary to support the conduct of the Business and the ownership and operation of the Acquired Assets have been duly obtained, are in full force and effect, and there are no proceedings pending that may result in the revocation, cancellation or suspension, or any materially adverse modification, of any such Permit, except in each case as would not, individually or in the aggregate, result in a Material Adverse Effect. The Business is in compliance with all Permits, except where the failure to be in compliance would not have a Material Adverse Effect. The execution, delivery and performance of, and compliance with, this Agreement and the Ancillary Agreements by Seller will not, with or without the passage of time or the giving of notice, result in any such violation or be in conflict with or constitute a default under any Permit.

**5.1.10 Brokers.** Seller has employed no finder, broker, agent or other intermediary in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby for which Purchaser would be liable.

**5.1.11 No Violations.** Assuming that the Third-Party Requirements will be satisfied, made or obtained and will remain in full force and effect, neither the execution, delivery or performance of this Agreement and the Ancillary Agreements by Seller, nor the consummation by Seller of the Sale, nor compliance by Seller with any of the provisions hereof and of the Ancillary Agreements, will, with or without the passage of time or the giving of notice: (a) result in any breach of any provisions of the articles of incorporation or bylaws of Seller; (b) result in a violation, or breach of, or constitute (with or without due notice or lapse of time) a default (or give rise to any right of termination, cancellation, amendment, vesting, payment, exercise, acceleration, suspension or revocation) under any of the terms, conditions or provisions of any note, bond, mortgage, deed of trust, security interest, indenture, loan or credit agreement, license, permit, contract, lease, agreement, plan or other instrument, commitment or obligation to which Seller is a party or by which its properties or assets may be bound or affected; (c) violate any order, writ, governmental authorization, injunction, decree, statute, rule or regulation applicable to Seller or to any of its properties or assets; or (d) result in the creation or imposition of any Lien other than Permitted Liens on any asset of Seller, except in the case of clauses (b), (c) and (d) above, for violations, breaches, defaults, terminations, cancellations, accelerations, creations, impositions, suspensions or revocations that: (1) would not individually or in the aggregate have a Material Adverse Effect; or (2) are excused by or unenforceable as a result of the filing of the Bankruptcy Case or the applicability of any provision of or any applicable law of the Bankruptcy Code.

**5.1.12 Contracts.** SCHEDULE 5.1.12 lists all Contracts of Seller that involve payment or performance obligations that individually will or are likely to exceed \$100,000 in the twelve months ending December 31, 2008, other than Accounts Receivable (collectively, "*Listed Contracts*").— Seller has made available to Purchaser either (1) copies that are true, correct and complete in all material respects or (2) written descriptions that are accurate in all material respects of the Listed Contracts, except as set forth on SCHEDULE 5.1.12. SCHEDULE 5.1.12 identifies all Post-Petition Contracts included within the Listed Contracts other than immaterial Post-Petition Contracts and open purchase orders entered into in the Ordinary Course of Business. Except as set forth on SCHEDULE 5.1.12, and except for Post-Petition Contracts that are immaterial to the Business, none of the Post-Petition Contracts included within the Listed Contracts contains any provisions restricting its assignment to Purchaser pursuant to the terms of this Agreement.

**5.1.13 Business Employees.** SCHEDULE 5.1.13 contains a list of all Business Employees as of January 30, 2008, and, to Seller's ~~Knowledge~~knowledge, the information thereon is true, complete and correct in all material respects.

**5.1.14 Absence of Other Representations or Warranties.** Except for the representations and warranties expressly set forth in Section 5.1 of this Agreement and the Ancillary Agreements, Seller makes no representations or warranties, express or implied, with respect to the Acquired Assets, the Assumed Liabilities, the sale of the Acquired Assets, and in particular but without limitation, Seller makes no representations with respect to any plan(s) of Purchaser for the future conduct of the Business. For the avoidance of doubt, no warranty or representation is given on the contents of the documents provided in due diligence, on any other documents or other information not contained in this Agreement or the Ancillary Agreements, or on any projected volumes of the Business, all which were produced only for information purposes.

**5.2 Representations and Warranties of Purchaser.** Purchaser warrants and represents to Seller as follows:

**5.2.1 ~~Corporate Data~~Organization and Good Standing.** Purchaser is a legal entity duly organized, validly existing and in good standing under the ~~laws~~Laws of its jurisdiction of ~~incorporation~~organization, and has all requisite ~~corporate or other organization~~limited liability company power and authority to own, lease and operate its properties and assets.

**5.2.2 ~~Corporate Power; Due Authorization.~~** Purchaser has the ~~corporate or other organizational~~limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated herein and therein. The execution, delivery and performance of this Agreement and the Ancillary Agreements have been duly authorized by all necessary action on the part of Purchaser. This Agreement is, and the Ancillary Agreements to which Purchaser is a party will be, when executed and delivered (assuming this Agreement constitutes a legal, valid and binding obligation of Seller), valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, reorganization, moratorium or similar ~~laws~~Laws or proceedings affecting the enforcement of creditors' rights generally and by the availability of equitable remedies and defenses.

**5.2.3 No Violations.** Neither the execution, delivery or performance of this Agreement by Purchaser, nor the consummation by Purchaser of the transactions contemplated herein, nor compliance by Purchaser with any of the provisions hereof, will: (a) except for the Third-Party Requirements, require Purchaser to obtain any consent, approval or action of, or make any filing with or give notice to, any domestic or foreign governmental or regulatory body or any other Person; (b) conflict with or result in any

breach of any provisions of the ~~certificate of incorporation or bylaws~~ articles of organization of Purchaser; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Purchaser or Purchaser's properties or assets.

**5.2.4 Litigation.** Except for the pendency of the Bankruptcy Case, there is no suit, action, proceeding or investigation (whether at ~~law~~ Law or equity, before or by any federal, state or foreign commission, court, tribunal, board, agency or instrumentality, or before any arbitrator) pending or, to the knowledge of Purchaser, threatened against or affecting Purchaser which could reasonably be expected to result in the issuance of an Order ~~outstanding~~ restraining, enjoining or otherwise prohibiting Purchaser from consummating the transactions contemplated by this Agreement.

**5.2.5 Brokers.** Purchaser has employed no finder, broker, agent or other intermediary in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby for which Seller would be liable.

**5.2.6 Solvency.** Upon the consummation of the transactions contemplated by this Agreement: (a) Purchaser will not be insolvent; (b) Purchaser will not be left with unreasonably small capital; (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature; (d) the capital of Purchaser will not be impaired; and (e) immediately following closing, Purchaser will have sufficient capital to continue the Business as a going concern (it being understood that Purchaser will have no obligation to continue all or any portion of the Business as a going concern).

**5.2.7 Availability of Funds.** Purchaser has or will have available, at or prior to Closing, sufficient cash in immediately available funds to pay the Purchase Price and all of its costs, fees and expenses necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

**5.2.8 Adequate Assurance of Future Performance.** Purchaser has provided, at the time set forth in the Bidding Procedures Order, adequate assurance of its future performance under each Assumed Contract to the parties thereto (other than Seller) in satisfaction of Section 365(f)(2)(B) of the Bankruptcy Code, and no other or further assurance shall be necessary thereunder with respect to any Assumed Contract.

**5.2.9 Compliance with Law.** Purchaser is in compliance with all Laws applicable to it, except with respect to those violations that could not reasonably be expected to result in the issuance of an Order ~~outstanding~~ restraining, enjoining or otherwise prohibiting Purchaser from consummating the transactions contemplated by this Agreement.

**5.2.10 Anti-Money Laundering.** Purchaser is in compliance with: (a) all applicable provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-57) ("**USA PATRIOT Act**") as amended and all regulations issued pursuant to it; (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibited Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism; (c) the International Emergency Economic Power Act (50 U.S.C. 1701 *et seq.*), and any applicable implementing regulations; (d) the Trading with the Enemies Act (50 U.S.C. 50 *et seq.*), and any applicable implementing regulations; and (e) all applicable legal requirements relating to anti-money laundering, anti-terrorism and economic sanctions in the jurisdictions in which Purchaser operates or does business. Neither the Purchaser nor any of its directors, officers or affiliates is identified on the United States Treasury Department Office of Foreign Asset Control's ("**OFAC**") list of "Specially Designated Nationals and Blocked Persons" (the "**SDN List**") or otherwise the target of an economic sanctions program administered by OFAC, and Purchaser is not affiliated in any way

with, or providing financial or material support to, any such persons or entities. Purchaser agrees that should it, or any of its directors, officers or affiliates be named at any time in the future on the SDN List, or any other similar list maintained by the United States Government, Purchaser shall inform Seller in writing immediately.

**5.3 Survival of Representations, Warranties and Covenants of Seller and Purchaser.**

The representations and warranties made by Seller and Purchaser in this Agreement, any Ancillary Agreement or any other document delivered to Purchaser hereunder or thereunder shall survive the execution and delivery of this Agreement and through the Closing, but shall not survive, and shall terminate at, the Closing. The covenants made by Seller and Purchaser in this Agreement or any Ancillary Agreement shall survive the Closing.

**6. CONDITIONS TO CLOSING:**

**6.1 Conditions to Obligations of Seller and Purchaser.** The respective obligations of each Party to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver at or prior to the Closing Date of the following conditions precedent:

**6.1.1 Sale Approval Order.** The Sale Approval Order, in form and substance reasonably satisfactory to Purchaser and Seller, shall be entered by the Bankruptcy Court and shall not be subject to a stay or injunction.

**6.1.2 No Law, Judgments, etc.** No provisions of any applicable Law and no judgment, injunction (preliminary or permanent), order or decree that prohibits, makes illegal or enjoins the consummation of the transactions contemplated by this Agreement shall be in effect (each Party taking any and all steps required by Section 8.2 of this Agreement).

**6.2 Conditions to Obligations of Purchaser.** The obligation of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions (any one or more of which may be waived in whole or in part by Purchaser):

**6.2.1 Accuracy of Representations and Warranties.** ~~Except as otherwise permitted by this Agreement, and after~~After giving effect to the Sale Approval Order, the representations and warranties of Seller contained in this Agreement that are qualified by materiality shall be true and correct, and the other representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, in each case as of the date hereof and as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which shall be true and correct only as of such date or time), other than any inaccuracies that do not, in the aggregate, have a Material Adverse Effect.

**6.2.2 Performance of Covenants.** Each of the Ancillary Agreements to which Seller is a party shall have been executed and delivered by Seller to Purchaser, and all other agreements and transactions contemplated hereby or in any Ancillary Agreement to be performed by Seller on or before the Closing shall have been performed in all respects.

**6.2.3 Other Approvals.** Except as expressly obviated by the terms of the Sale Approval Order, the third-party consents set forth in **SCHEDULE 6.2.3** shall have been received and all consents, approvals and filings in connection with Third-Party Requirements shall have been obtained or made in form and substance reasonably satisfactory to the Purchaser.

**6.3 Conditions to Obligations of Seller.** Except as otherwise permitted by this Agreement, the obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions (any one or more of which may be waived in whole or in part by Seller):

**6.3.1 Accuracy of Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement that are qualified by materiality shall be true and correct, and the other representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects, in each case as of the Closing Date if made on such date (except for representations and warranties that speak as of a specific date or time, which shall be true and correct only as of such date or time), other than any inaccuracies that do not, in the aggregate, have a material adverse effect on Purchaser.

**6.3.2 Performance of Covenants.** Each of the Ancillary Agreements to which Purchaser is a party shall have been executed and delivered by Purchaser to Seller, and all other agreements and transactions contemplated hereby or in any Ancillary Agreement to be performed by Purchaser on or before the Closing shall have been performed in all material respects, and Purchaser shall have provided adequate assurance of future performance under those Ancillary Agreements.

**6.3.3 Delivery of Purchase Price.** Purchaser shall have delivered to Seller the Purchase Price by wire transfer, in immediately available funds, to such bank account or bank accounts as shall be specified by Seller to Purchaser on the Closing Date.

**7. CLOSING:**

**7.1 The Closing.** Subject to the satisfaction of the conditions set forth in Article 6 of this Agreement, the closing (the "**Closing**") of the transactions contemplated hereby shall take place at the offices of Cooley Godward Kronish LLP, 101 California Street, Fifth Floor, San Francisco, California at 10:00 a.m. on the second Business Day after the conditions set forth in Article 6 shall have been satisfied or waived (other than conditions which by their nature can be satisfied only at the Closing), or on such other date or at such other time as the Parties may agree.

**7.2 Ancillary Agreements.** At the Closing, the Parties shall execute and deliver each to the other the following agreements to which they are a party:

**7.2.1** Assignment and Assumption Agreement relating to the Transferred Contracts and Assumed Liabilities, consistent with the Sale Approval Order substantially in the form attached hereto as **SCHEDULE 7.2.1**.

**7.2.2** Bill of Sale substantially in the form attached hereto as **SCHEDULE 7.2.2**.

**7.3 Seller's Deliveries.** At the Closing, Seller shall deliver to Purchaser the following, in proper form for recording where appropriate:

**7.3.1** Executed assignments for the Permits and Contracts included in the Acquired Assets.

**7.3.2** An officer's certificate, dated as of the Closing Date, executed on behalf of Seller, certifying that the conditions specified in Section 6.2 have been fulfilled.

**7.3.3** Certified copies of all orders of the Bankruptcy Court pertaining to the contemplated transactions contemplated by this Agreement and the Ancillary Agreements, including the Sale Approval Order.

**7.3.4** Duly executed Bill of Sale transferring the Acquired Assets to Purchaser.

**7.3.5** Duly executed Intellectual Property assignments in form and substance reasonably satisfactory to Purchaser.

**7.3.6** ~~7.3.5~~ Appropriate receipts.

**7.4 Purchaser's Deliveries.** At the Closing, Purchaser shall deliver to Seller, in proper form for recording where appropriate:

**7.4.1** The Purchase Price less the Deposit Amount as required by, and in accordance with, Section 4.1.

**7.4.2** An Assignment and Assumption Agreement pursuant to which the Purchaser assumes the Assumed Liabilities.

**7.4.3** An officer's certificate, dated as of the Closing Date, executed on behalf of Purchaser, certifying that the conditions specified in Section 6.3 have been fulfilled.

**8. CERTAIN ADDITIONAL COVENANTS:**

**8.1 Bankruptcy Actions:**

**8.1.1** Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Approval Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code.

**8.1.2** This Agreement is subject to approval by the Bankruptcy Court.

**8.2 Registrations, Filings and Consents; Further Actions.** Upon the terms and subject to the conditions of this Agreement, each of the ~~parties~~Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all appropriate actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable ~~laws and regulations~~Laws to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as practicable including, without limitation, using their reasonable best efforts to cause the satisfaction of all conditions to Closing.

**8.3 Operation of the Business Pending Closing:**

**8.3.1** Except: (a) as otherwise provided herein; (b) as required by or resulting from the Bankruptcy Case or otherwise approved by the Bankruptcy Court; (c) subject to any changes that may be required under applicable Laws; and (d) as set forth in the following sentence, until the Closing, Seller will (i) carry on the Business in substantially the same manner as heretofore, (ii) will perform in all material respects all of its obligations under all ~~Listed~~Assumed Contracts and not amend, alter or modify in any

significant respect that is materially adverse to the Business any provision of any ~~Listed~~ Assumed Contract, (iii) keep in full force and effect insurance comparable in amount and scope to coverage maintained by it on the date of this Agreement, (iv) use commercially reasonable efforts to maintain and preserve relations with customers, suppliers, employees and others having business relations with the Business ~~and~~, (v) endeavor to maintain the goodwill of the Business, (vi) maintain the Acquired Assets in good operating order and condition, reasonable wear and tear excepted, and promptly repair, restore or replace any Acquired Assets in the ordinary course of business, (vii) comply with all applicable Laws, Permits and Orders, (viii) use best efforts to obtain all approvals and consents, and (ix) keep in full force and effect, without amendment, all material rights relating to the Business.

**8.3.2** Seller shall promptly notify Purchaser if Seller becomes aware of the occurrence of any event or circumstance that would reasonably be expected to cause the conditions set forth in Sections 6.1.1, 6.1.2, 6.2.1 or 6.2.3 hereof not to be satisfied including, without limitation, any event or circumstance that, upon the occurrence of such event or circumstance, causes any representation or warranty of Seller to be untrue ~~in any material respect~~ at the time of the occurrence of such event or condition.

**8.3.3** Purchaser shall promptly notify Seller if Purchaser becomes aware of the occurrence of any event or circumstance that could reasonably be expected to cause the conditions set forth in Sections 6.1.1, 6.1.2 or 6.3.1 hereof not to be satisfied including, without limitation, any event or circumstance that, upon the occurrence of such event or circumstance, causes any representation or warranty of the Purchaser to be untrue in any ~~material~~ respect at the time of the occurrence of such event or condition.

**8.4 Assumed Contracts; Cure Amounts.** Seller shall pay Cure Amounts as agreed to by Seller and each party to an Assumed Contract or, absent such agreement, by order of the Bankruptcy Court in the time and manner specified by the Sale Approval Order.

**8.5 Post-Closing Covenants.** From and after the Closing, each of the Parties will perform its respective covenants and agreements set forth below:

**8.5.1 Books and Records and Litigation Assistance From and After Closing:**

**A.** Purchaser and its Affiliates shall use reasonable efforts to preserve and keep all books, records, computer files, software programs and any data processing files delivered to Purchaser by Seller and its Affiliates pursuant to the provisions of this Agreement for a period of not less than one year from the Closing Date, ~~or for any longer period as may be required of the Business by any government agency, law, regulation, audit or appeal of Taxes, or Tax examination~~ at Purchaser's sole cost and expense. If and when Purchaser believes that such records are no longer legally required, it will notify Seller. During such period, Purchaser shall: (i) provide Seller or its Affiliates with reasonable access, during normal business hours, and in a manner so as not to unduly interfere with the normal operations of Purchaser, to such documents and information as reasonably necessary, consistent with past practice, to complete the accounting books and records of the Business as of ~~December 31, 2008~~ the Closing Date; and (ii) make such books and records available, during normal business hours, and in a manner so as not to unduly interfere with the normal operations of Purchaser, to Seller and its Affiliates as may be reasonably required by Seller in connection with the Bankruptcy Case, in connection with any legal proceedings against or governmental investigations of Seller and its Affiliates or in connection with any Tax examination, audit or appeal of Taxes of Seller and its Affiliates, the Business or the Acquired Assets during such period. Seller shall reimburse Purchaser for the reasonable ~~out of pocket costs and expenses~~ incurred in connection with any request by Seller to make available records pursuant to the foregoing ~~sentences~~ sentences. In the event Purchaser wishes to destroy or dispose of such books and



records after one year from the Closing Date, it shall first give not less than 30 days' prior written notice to Seller, and Seller shall have the right, at its option, upon prior written notice given to Purchaser within 20 days of receipt of Purchaser's notice, to take possession of said records within 30 days after the date of Purchaser's notice to Seller hereunder.

**B.** Purchaser, for itself and on behalf of its Affiliates, agrees to: (i) retain all documents required to be maintained by federal, state, national or local legislation or regulations; (ii) make available documents and records delivered to it by Seller reasonably necessary in connection with any pursuit, contest or defense related to the Business, including documents that may be considered to be "confidential" or subject to trade secret protection (except that: (a) no documents or records protected by the attorney client privilege in favor of Purchaser must be made available if making these documents or records available would cause the loss of this privilege (in any case, however, Purchaser must notify Seller of the existence of such privileged documents); and (b) Seller will agree to keep confidential and not use for any other purpose documents and records that are confidential or are subject to trade secret protection); and (iii) make available, as may be reasonably necessary and upon reasonable advance notice and for reasonable periods so as not to significantly interfere with Purchaser's business, mutually acceptable engineers, technicians or other knowledgeable individuals to assist Seller and its Affiliates in connection with such claim.

**8.5.2 Payment and Collections.** Seller shall take such action as may be reasonably necessary to segregate payments made or collections received on behalf of Purchaser after Closing, and ~~Purchaser shall take such action as may be reasonably necessary to segregate payments made or collections received on behalf of Seller after Closing, in order to ensure that the cost of the related liability or the benefits of the related assets accrue to the appropriate Party in accordance with the terms of this Agreement. To the extent that any such collections are received after Closing in the form of checks or other negotiable instruments payable to the other Party, Seller or Purchaser, as appropriate, shall promptly take all necessary action to endorse such checks or instruments to permit the appropriate Party to collect the proceeds of such checks and instruments.~~ Seller hereby grants to Purchaser the power, right and authority, coupled with an interest, to receive, endorse, cash, deposit, and otherwise deal with, in the name of Seller, any checks, drafts, documents and instruments evidencing payment of any accounts receivable or other payment rights included in the Acquired Assets and that are payable to, payable to the order of, or endorsed in favor of Seller or any agent of Seller. Seller agrees promptly to endorse and pay over or cause to be endorsed and paid over to Purchaser, without deduction or offset, the full amount of any payment received by Seller after the Closing in respect of goods sold or services rendered as part of the Business, and will hold any such amount in trust for Purchaser pending such payment. Seller shall promptly send Purchaser copies of all remittance advices and checks related to payments received by Seller with respect to such items. Purchaser shall notify the Business' customers of the change in address of the owner of the Acquired Assets as may be required in order for such customers to properly remit any payments required under any applicable Acquired Asset and Seller shall cooperate with Purchaser as is ~~reasonably~~ necessary to so notify such customers, including providing appropriate contact information for each such customer.

**8.5.3 Mail.** From and after the Closing, Seller will promptly forward or cause to be forwarded to Purchaser any mail received by Seller or any of its Affiliates that relates to the Business, the Acquired Assets, or the Assumed Liabilities.

**8.6 Certain Transactions.** Purchaser shall not, and shall cause its Affiliates not to, acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets if the entering into of a definitive agreement relating to or the consummation of such acquisition, merger or consolidation would reasonably be expected to: (a) impose any material delay in the obtaining of, or

significantly increase the risk of not obtaining, any authorizations, consents, orders, declarations or approvals of any Governmental Entity necessary to consummate the transactions contemplated by this Agreement or the Ancillary Agreements or the expiration or termination of any applicable waiting period; (b) significantly increase the risk of any Governmental Entity entering an order prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements; (c) significantly increase the risk of not being able to remove any such order on appeal or otherwise; or (d) materially delay or prevent the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

**8.7 Communications with Customers and Suppliers.** Prior to the Closing, Purchaser shall not, and shall cause its ~~Subsidiaries~~Affiliates and representatives not to, contact, engage in any discussions or otherwise communicate with any of the Business' customers, suppliers and others with whom it has material commercial dealings without obtaining the prior written consent of Seller (which shall not be unreasonably withheld and which may be conditioned on Seller having the right to participate in any meetings or discussion with any such customers, suppliers or others); provided, that Purchaser and Seller shall work together in good faith to arrange for an orderly transition of customer, supplier, and other third party relationships, including, without limitation, at the request of Purchaser, meetings (including with Seller) and other correspondence with such customers, suppliers, and other third parties to ensure such orderly transition. After the Closing, Seller will cooperate to the fullest extent reasonably practical with Purchaser in its efforts to continue and maintain for the benefit of Purchaser those business relationships of Seller existing prior to the Closing relating to the Business and relating to the business to be operated by Purchaser after the Closing, but only with respect to the Acquired Assets and the Business. Seller will refer to Purchaser all inquiries relating to the Business.

**8.8 Cooperation.** Subject to the terms and conditions provided in this Agreement, each of the Parties will use its commercially reasonable best efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated herein, to obtain all necessary waivers, consents and approvals, to effect all necessary registrations and filings, and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated herein for the purpose of securing to the Parties hereto the benefits contemplated by this Agreement.

**8.9 Removal of Assets.** Seller shall cause the Premises to be available to Purchaser for a reasonable period of time following Closing, but in any event, no fewer than ten (10) Business Days, in order for Purchaser to remove any of its Acquired Assets located on or at the Premises. Such removal shall be done in such manner as to avoid any damage to the Premises.

**8.10 Consents; Failure to Obtain Consents.** Without prejudice to Section 7.3, after the Closing, Seller will use its commercially reasonable best efforts to obtain or cause to be obtained any Third-Party Requirements (including any other consents that may be required in connection with the transactions contemplated herein) that have not been previously obtained prior to or at the Closing. Notwithstanding anything to the contrary set forth herein, this Agreement will not constitute an assignment or attempt to assign or transfer any interest in any Contract or Permit otherwise included in the Acquired Assets, or any claim, right or benefit arising thereunder or resulting therefrom, if such assignment or transfer is without the consent of a third party and would constitute a breach or violation thereof or adversely affect the rights of Purchaser, the Acquired Assets or the Business. Until all such consents are obtained, Seller will cooperate to the fullest extent possible in any arrangement reasonably satisfactory to Purchaser designed to fulfill Seller's obligations thereunder and to afford Purchaser the continued full benefits thereof.

**9. TERMINATION:**

**9.1 Termination.** Anything contained herein to the contrary notwithstanding, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date:

**9.1.1 By Either Party:**

**A.** By mutual written consent of Seller and Purchaser.

**B.** Provided the terminating Party is not in default of its obligations under this Agreement, if consummation of the Sale would violate any non-appealable Final Order of any ~~regulatory~~ Governmental Entity, other than the Bankruptcy Court.

**C.** Provided the terminating Party is not in default of its obligations under this Agreement, by either Seller or Purchaser if the Closing shall not have occurred by February 29, 2008.

**D.** If the Bankruptcy Court has not entered the Sale Approval Order, on or before February 29, 2008 (the "**Termination Date**") or such Sale Approval Order is subject to a stay or injunction; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1.1.D shall not be available to Purchaser or Seller if Purchaser or Seller shall have failed to perform, or caused any of ~~its~~their respective Affiliates to perform in all material respects, any of ~~its~~their respective ~~material~~ obligations under this Agreement.

**9.1.2 By Seller.** By Seller, if (a) any condition to the obligations of Seller set forth in Section 6.1 or Section 6.3 shall have become incapable of fulfillment other than as a result of a breach by any Seller of any covenant or agreement contained in this Agreement, and such condition or compliance with such agreement is not waived by Seller or (b) there shall be a material breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement, that would result in a failure of a condition set forth in Section 6.1 or Section 6.3, and which breach cannot be cured or has not been cured by the earlier of (i) seven Business Days after giving of written notice by Seller to Purchaser of such breach and (ii) the Termination Date.

**9.1.3 By Purchaser.** By Purchaser, if (a) any condition to the obligations of Purchaser set forth in Section 6.1 or Section 6.2 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition or compliance with such agreement is not waived by Purchaser or (b) there shall be a material breach by Seller of any representation or warranty, or any covenant or agreement contained in this Agreement, that would result in a failure of a condition set forth in Section 6.1 or Section 6.2, and which breach cannot be cured or has not been cured by the earlier of (i) seven Business Days after giving of written notice by Purchaser to Seller of such breach and (ii) the Termination Date.

**9.2 Notice of Termination.** In the event of any termination pursuant to this Article 9, written notice thereof setting forth the reasons therefor shall promptly be given to the other Party and the transactions contemplated by this Agreement shall be terminated, without further action by any Party.

**9.3 Procedure and Effect of Termination.** In the event of termination and abandonment of the transactions contemplated hereby pursuant to Section 9.1, written notice thereof shall forthwith be given to the other Parties to this Agreement, and this Agreement shall terminate (subject to the provisions of this Article 9) and the transactions contemplated by this Agreement shall be abandoned, without further action by any of the ~~parties~~Parties hereto. If this Agreement is terminated as provided herein no

Party shall have any liability or further obligation to any other Party resulting from such termination except for the provisions of: (i)(a) Purchasers' obligations under any confidentiality agreement between Purchaser and Seller; (b) Article 9 (Termination); and (c) Sections 4.1.1(B) (Deposit Amount), 11.2 (Notices), 11.3 (Assignment), 11.4 (Entire Agreement), 11.5 (Waiver), 11.7 (Amendment), 11.8 (Expenses), 11.12 (Governing Law), 11.13 (Public Announcements), 11.15 (Venue and Retention of Jurisdiction) and 11.18 (Dispute Resolution), all of which shall remain in full force and effect; and (ii) no ~~party~~Party waives any claim or right under Applicable Law, in equity or otherwise, by reason of such breach that it may have against a breaching ~~party~~Party in respect of any of its representations, warranties, covenants or agreements set forth in this Agreement occurring prior to such termination. In connection with any termination of this Agreement, all filings, applications and other submissions made pursuant to the transactions contemplated by this Agreement shall, to the extent practicable, be withdrawn from the agency or Person to which made.

## 10. OTHER TAX MATTERS:

**10.1 Tax Returns for Pre-Closing Period.** Seller will be responsible for the preparation and filing of all Tax Returns for the Business for ~~all periods for which Tax Returns are due prior to~~the period ending on the Closing Date, including amended returns, applications for loss carryback refunds and applications for estimated tax refunds. Purchaser shall make available to Seller (and to Seller's accountants and attorneys) any and all books and records and other documents and information in its possession or control reasonably requested by Seller to prepare these Tax Returns. Seller will make all payments required with respect to any such Tax Return.

**10.2 Tax Returns for Post-Closing Period.** Purchaser will be responsible for the preparation and filing of all Tax Returns for the Business for ~~all periods for which Tax Returns are due~~the period beginning after the Closing Date (other than for Taxes with respect to periods for which the consolidated, unitary and Tax Returns of Seller will include the operations of the Business). Purchaser shall be responsible for and shall pay when due all Taxes attributable, levied or imposed upon or incurred in connection with the Acquired Assets and the Business pertaining to: (a) ~~any~~the period ending after the Closing Date; and (b) the portion of any Taxes for which Purchaser is liable as determined in accordance with Section 10.3 below.

**10.3 Straddle Period.** For purposes of this Article 10 and Section 2.3, whenever it is necessary to allocate the liability for Taxes for a Straddle Period, the determination of the Taxes of the Business for the portion of the Straddle Period ending at the end of the Closing Date (the "**Pre-Closing Portion**") and the portion of the Straddle Period beginning after the Closing Date (the "**Post-Closing Portion**") will be determined by assuming that the Straddle Period consisted of two taxable years or periods, one of which ended at the close of business on the Closing Date and the other of which began at the beginning of the day after the Closing Date, and items of income, gain, deduction, loss or credit related to the Acquired Assets and the Business for the Straddle Period will be allocated between such two taxable years or periods on a "closing of the books basis" by assuming that the books associated with the Business were closed at the end of the Closing Date; *provided, however*, that all real property taxes, personal property taxes, ad valorem obligations and similar taxes imposed on a periodic basis, in each case levied with respect to the Acquired Assets (other than Taxes resulting from the transactions described herein as provided for in Section 10.1) for a Straddle Period shall be apportioned between Seller and Purchaser as of the Closing Date based on the number of days of such taxable period up to and including the Closing Date and the number of days of such taxable period following the Closing Date. Seller shall be liable for the proportionate amount of such taxes that is attributable to the period up to and including the Closing Date; Purchaser shall be liable for the proportionate amount of such taxes that is attributable to the period following the Closing Date.

**10.4 Cooperation.** Seller and Purchaser will cooperate in connection with: (a) the preparation of filing of any Tax Return, Tax election, Tax consent or certification or any claim for a Tax refund; (b) any determination of liability for Taxes; and (iii) any audit, examination or other proceeding in respect of Taxes related to the Business or the Acquired Assets. Such cooperation includes a reasonable amount of direct access to accounting, engineering and contracting personnel, subject to availability, which shall not be unreasonably restricted, and advance notice to Purchaser.

**10.5 Tax Elections.** Seller shall not, and shall not cause the Business to make, revoke or amend any tax election, execute any waiver of restrictions or tax assessments or collections or extensions if there will be any impact on Purchaser as a result of doing so.

**11. MISCELLANEOUS:**

**11.1 Bulk Sales Laws.** Seller and Purchaser hereby waive compliance by Seller with the provisions of the bulk sales Law of any state or foreign jurisdiction.

**11.2 Notices.** All notices, requests, consents or other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, or when sent if sent via facsimile (with receipt confirmed), or on the first business day after sent by reputable overnight carrier, or on the third business day after sent by registered or certified first class mail (with receipt confirmed) , to Purchaser ~~at the address set forth on the signature page hereto and to~~ Seller at the address or facsimile set forth below (or at such other address as the intended recipient shall have specified in a written notice given to the other ~~party~~Party hereto):

**If to Seller:**                   **SOLIDUS NETWORKS, INC.**  
c/o Solidus Networks, Inc.  
101 Second Street, Suite 1100  
San Francisco, CA 94105  
Attn: Steve Zelinger  
Fax No.: (415) 371-5685

With a copy to: **HENNIGAN, BENNETT & DORMAN LLP**  
865 South Figueroa Street, Suite 2900  
Los Angeles, California 90017  
Attn: Joshua M. Mester  
Fax No.: (213) 694-1234

With a copy to: **COOLEY GODWARD KRONISH LLP**  
101 California Street, Fifth Floor  
San Francisco, CA 94111  
Attn: Kenneth L. Guernsey  
Fax No.: (415) 693-2222

**If to Purchaser:**           **ACCULLINK, LLC**  
2812 Spring Road  
Atlanta, Georgia 30339  
Attn: Chuck Thakker  
Fax No.:

With a copy to: KILPATRICK STOCKTON LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309  
Attn: W. Benjamin Barkley  
Fax No.: (404) 541-3121

**11.3 Assignment.** This Agreement shall be binding and inure to the benefit of the successors and assigns of each of the Parties and their Affiliates, but no rights, obligations, duties or liabilities of either Party may be assigned without the prior written consent of the other, which shall not be unreasonably withheld.

**11.4 Entire Agreement.** This Agreement, together with the Ancillary Agreements and schedules hereto, represents the entire agreement and understanding between the Parties with respect to the transactions contemplated herein. This Agreement supersedes all prior agreements, understandings, arrangements, covenants, representations or warranties, written or oral, by any officer, employee or representative of either Party dealing with the subject matter hereof.

**11.5 Waiver.** Any waiver by Seller or Purchaser of any breach or of a failure to comply with any provision of this Agreement: (i) shall be valid only if set forth in a written instrument signed by the Party to be bound; and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any provision of this Agreement. At any time prior to the Closing Date, the Parties may: (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto; (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto; ~~and/or~~ (c) waive compliance with any of the agreements or conditions contained herein. Except as otherwise expressly provided herein, any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party.

**11.6 Severability.** Should any provision, or any portion thereof, of this Agreement for any reason be held invalid or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions, or portions thereof, of this Agreement, which other provisions, and portions, shall remain in full force and effect, and the application of such invalid or unenforceable provision, or portion thereof, to persons or circumstances other than those as to which it is held invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by Law.

**11.7 Amendment.** This Agreement may only be amended only in writing by duly authorized representatives or officers of the Parties.

**11.8 Expenses.** Each Party shall be responsible for its own expenses incurred in connection with the preparation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby.

**11.9 Third Parties.** Nothing contained in this Agreement, express or implied, is intended to or shall be construed to confer upon or give to any person, firm, corporation, association, labor union or trust (other than the Parties, their Affiliates and their respective permitted successors and assigns), any claims, rights or remedies under or by reason of this Agreement.

**11.10 Headings.** The headings contained in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**11.11 Counterparts.** More than one counterpart of this Agreement may be executed by the Parties, and each fully executed counterpart shall be deemed an original.

**11.12 Governing Law.** This Agreement shall be construed and enforced in accordance with the ~~laws~~Laws of the State of California and, to the extent applicable the Bankruptcy Code, without giving effect to rules governing the conflict of laws.

**11.13 Public Announcements.** Seller and Purchaser will consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and shall not issue any press release or make any public statement without mutual consent, except as may be required by Law and then only with such prior consultation.

**11.14 Sales or Transfer Taxes.** All sales taxes, documentary and stamp taxes, transfer taxes, use taxes, gross receipts taxes, excise taxes, value-added gross receipt taxes or similar charges and all charges for filing and recording documents in connection with the transfer of the Acquired Assets (including intellectual property filing and recording fees) shall be paid by Purchaser.

**11.15 Venue and Retention of Jurisdiction.** All actions brought, arising out of or related to the transactions contemplated in this Agreement shall be brought in the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to determine any and all such actions.

**11.16 Risk of Loss.** Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Acquired Assets or the Business shall be borne exclusively by Seller.

**11.17 Enforcement of Agreement.** The Parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to all other remedies available at ~~law~~Law or in equity.

**11.18 Dispute Resolution.** Seller and Purchaser will, in the first instance, attempt to settle any and all claims or disputes arising in connection with this Agreement or any Ancillary Agreement by good faith negotiations by senior management of each ~~party~~Party. If the dispute is not resolved by senior management within 30 days after delivery of a written request for such negotiation by either ~~party~~Party to the other, either ~~party~~Party may make a written demand for formal dispute resolution (the "**Notice**") and specify therein in reasonable detail the nature of the dispute. Within 15 business days after receipt of the Notice, the receiving ~~party~~Party shall submit to the other a written response. The Notice and the response shall include: (i) a statement of the respective ~~party~~Party's position and a summary of arguments supporting that position; and (ii) the name and title of the executive who will represent that ~~party~~Party and of any other person who will accompany the executive to meetings of the ~~parties~~Parties. Within 15 business days after such written notification, the executives (and others named in the Notice or response) will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one ~~party~~Party to the other will be honored promptly. All negotiations pursuant to this Section 11.18 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. In any case, the Parties agree not to commence any litigation actions until the expiration of 90 days after the date of the Notice, and all such actions are subject to Section 11.15 above.

**11.19 No Right of Setoff.** Neither ~~party~~Party hereto nor any Affiliate thereof may deduct from, set off, holdback or otherwise reduce in any manner whatsoever any amount owed to it hereunder or pursuant to any Ancillary Agreement against any amounts owed hereunder or pursuant to any Ancillary Agreement by such Persons to the other ~~party~~Party hereto or any of such other ~~party~~Party's Affiliates.

**11.20 Limitation on Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING ARTICLE 11, IN NO EVENT SHALL PURCHASER OR ~~SELLER~~SELLER BE LIABLE FOR, OR BEAR ANY OBLIGATION IN RESPECT OF, ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER OR ANY DAMAGES RELATING TO, OR ARISING OUT OF, DIMINUTION IN VALUE, LOST PROFITS OR CHANGES IN RESTRICTIONS ON BUSINESS PRACTICES.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

**SELLER:**

**SOLIDUS NETWORKS, INC.**

**PURCHASER:**

**Purchaser Name: ACCULLINK, LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

SCHEDULE A

DEFINITIONS

The following terms, as used in this Agreement, shall have the following meanings whether used in the singular or plural (other terms are defined in Sections or Schedules to which they pertain):

***“Accounts Receivable”*** means, only to the extent primarily or solely related to the Products and the Business, all trade accounts receivable and other rights to payment from customers and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of products or services delivered to customers, all other accounts or notes receivable and the full benefit of all security for such accounts or notes and any claim, remedy or other right related to any of the foregoing.

***“Acquired Assets”*** means the assets referred to in Section 1.1.1.

***“Administrative Assets”*** means books, records and other administrative assets used exclusively in or necessary for continuing the operations of the Business including but not limited to advertising and promotional materials, catalogues, price lists, correspondence, mailing lists, customer lists, vendor lists, photographs, production data, sales materials and records, purchasing materials and records, personnel records of employees, billing records, accounting records, other financial records, and sale order files.

***“Affiliate”*** means with respect to any Party any business or other entity directly or indirectly controlling, controlled by or under common control with such specified entity. For purposes of this definition, control means ownership of more than 50% of the shares or other equity interest having power to elect directors or persons performing a similar function.

***“Agreement”*** means this Asset Sale and Purchase Agreement, including its Schedules.

***“Allocation”*** means allocation of the Purchase Price, as described in Section 4.2.

***“Ancillary Agreements”*** means the agreements referred to in Section 7.2.

***“Assumed Contracts”*** means those Transferred Contracts entered into by Seller before the Petition Date.

***“Assumed Liabilities”*** means the obligations assumed by Purchaser pursuant to Article 2, but only to the extent that an obligation: (a) arises on or after the Closing; and (b) with respect to obligations arising under Transferred Contracts: (i) does not arise from or relate to any breach by Seller of any provision of any of the Transferred Contracts; (ii) does not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing that, with or without notice or lapse of time, would constitute or result in a breach of any of the Transferred Contracts; and (iii) is ascertainable by reference to the express terms of the Transferred Contracts.

***“Bankruptcy Case(s)”*** shall have the meaning set forth in the Recitals.

***“Bankruptcy Code”*** shall have the meaning set forth in the Recitals.

***“Bankruptcy Court”*** shall have the meaning set forth in the Recitals.

“**Bankruptcy Rules**” means the U.S. Federal Rules of Bankruptcy Procedure.

“**Bidding Procedures Order**” shall have the meaning set forth in the Recitals.

“**Business**” means the online (i.e. real-time) debit payment acquisition/processing operating business operated by the Seller under the business-name of “ATM Direct.”

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banks in Los Angeles, California are authorized or obligated by ~~law~~Law or executive order to close.

“**Business Employees**” shall have the meaning set forth in Section 3.1.

“**Claims**” mean losses, liabilities, claims (as defined in Section 101 of the Bankruptcy Code), damages or expenses (including reasonable legal fees and expenses) ~~whatsoever of any kind, character or description~~, whether known or unknown, fixed, liquidated, contingent, accrued, secured, due, vested, or otherwise.

“**Closing**” shall have the meaning set forth in Section 7.1.

“**Closing Date**” means the date of Closing.

“**Contracts**” mean all written or ~~material~~ oral purchase orders, sales agreements, service contracts, distribution agreements, sales representative agreements, employment or consulting agreements, leases (for real property, personal property or otherwise), product warranty or service agreements and other commitments, agreements and undertakings of any nature, including quotations and bids outstanding on the Closing Date, in each case, that are ~~used exclusively to support~~ primarily or solely related to the conduct of Products, the Business or that relate exclusively to the Acquired Assets

“**Copyrights**” mean: (i) copyrights existing anywhere (registered, statutory or otherwise) and registrations, renewals, revivals, reissuances, extensions and applications for registration thereof, and all rights therein, provided by international treaties or conventions; (ii) moral rights (including, without limitation, rights of paternity and integrity), and waivers of such rights by others; (iii) database and data protection rights whether or not based on copyright; (iv) semiconductor chip mask work registrations and applications for registration thereof; (v) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; (vi) all rights to file and apply for, prosecute, defend and enforce any of the foregoing; and (vii) all rights to sue or recover and retain damages and costs and attorneys’ fees for present and past infringement of any of the foregoing.

“**Cure Amounts**” means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise effectuate, pursuant to the Bankruptcy Code, the assumption by Seller and assignment to Purchaser of the Assumed Contracts under the Sale Approval Order that are Transferred Contracts.

“**Deposit Amount**” shall have the meaning set forth in Section 4.1.1.

“**Disclosure Schedules**” means, collectively, the Schedules to Seller’s Representations and Warranties contained in Section 5.1.

“**Excluded Assets**” means assets not included in the Acquired Assets, as set forth in Section 1.1.2.

**“Excluded License”** shall have the meaning set forth in Section 5.1.7.E.

**“Final Order”** means an order or judgment: (i) as to which the time to appeal, petition for certiorari or move for review or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for review or rehearing is pending or (ii) if an appeal, writ of certiorari, re-argument or rehearing has been filed or sought, the order or judgment has been affirmed by the highest court to which such order or judgment was appealed or certiorari has been denied, or re-argument or rehearing shall have been denied or resulted in no modification of such order or judgment, and the time to take any further appeal or to seek certiorari or further re-argument or rehearing has expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order or judgment shall not prevent such order or judgment from being considered a Final Order.

**“Governmental Entity”** means any United States federal, state or local, tribunal, legislative, executive, governmental, quasi-governmental or regulatory authority, self-regulatory authority, agency, department, commission, instrumentality or body having governmental authority with respect to the transactions contemplated hereby, under applicable ~~law~~Law.

**“Including”** means, whether or not initially capitalized, including without limitation.

**“Intellectual Property”** means Patent Rights, Trademark Rights, Copyrights, Software, Technical Documentation, Trade Secrets, Know-How and registered domain names and IP addresses.

**“Inventory”** means finished goods, raw materials, work-in-process, packaging, stores, stock, supplies, and other inventory, wherever located.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.

**“Know-How”** means proprietary technical and business knowledge and information, including specifications, designs, methodologies, processes and production techniques resulting from research and development, technology, manufacturing and production processes, research and development information, drawings, specifications, designs, plans, proposals, technical data, vendor and marketing and business data and customer and vendor lists and information, whether or not confidential.

**“Laws”** means laws, statutes, rules, ordinances, codes, standards, administrative rulings or regulations of any applicable federal, state, local or foreign governmental authority~~Governmental Entity~~.

**“Licensed Intellectual Property”** means Seller’s rights with respect to all Intellectual Property licensed or sublicensed to Seller from an affiliated or unaffiliated third party.

**“Lien”** means any lien, charge, claim, pledge, security interest, conditional sale agreement or other title retention agreement, title defect or restriction, lease, mortgage, objection, pledge, security interest, option, hypothecation, restriction, covenant, transfer restriction, right of first refusal, adverse claim, easement, right-of-way, claim or charge of any kind or nature whatsoever or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

**“Listed Contracts”** means Seller’s contracts and commitments listed on SCHEDULE 5.1.12.

**“Material Adverse Effect”** means any change or event that has a material adverse effect on the business, assets, properties, financial condition or results of operations of the Business taken as a whole, except any change or event resulting from, relating to or arising out of: (a) any act or omission of Seller taken with the prior written consent of the Purchaser; (b) any action taken by Seller or Purchaser or any of their respective representatives required by the terms of this Agreement; (c) general business or economic conditions; (d) conditions affecting the industry and markets in which the Business generally operates; (e) increases in energy, electricity, natural gas, raw materials or other operating costs; (f) changes resulting solely from the filing of the Bankruptcy Case or from any action required by the Bankruptcy Court; (g) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon such country, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of any of such countries; (h) acts of God; (i) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (j) changes in United States generally accepted accounting principles or generally accepted accounting principles of any foreign jurisdiction; (k) changes in any Law; (l) any existing event, occurrence or circumstance listed in the Disclosure Schedule as of the date hereof; (m) any adverse change in or effect on the Business that is entirely cured by Seller before the earlier of: (1) the Closing Date; and (2) the date on which this Agreement is terminated pursuant to Section 9.1 hereof; or (n) the regulatory status of the Purchaser.

**“Notice”** shall have the meaning set forth in Section 11.18.

**“OFAC”** shall have the meaning set forth in Section 5.2.10.

**“Ordinary Course of Business”** means, with respect to the Business, the ordinary course of business consistent with custom and practice of the Business from and after the Petition Date or to the extent consistent with orders issued in the Bankruptcy Case.

**“Owned Intellectual Property”** means all Intellectual Property in and to which Seller holds, or has a right to hold, in whole or in part, right, title and interest.

**“Party”** or **“Parties”** means Purchaser and/or Seller.

**“Patent Rights”** means: (i) patentable inventions, whether or not reduced to practice, and whether or not yet made the subject of a pending patent application or applications; (ii) designs, ideas and conceptions of patentable subject matter, including, without limitation, any patent disclosures and inventor certificates, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (iii) national (including the United States) and multinational statutory invention and design registrations, patents, and patent applications (including all provisionals, substitutions, reissues, divisions, continuations, continuations-in-part, extensions and reexaminations) and all rights therein provided by international treaties or conventions, and all patentable improvements to the inventions disclosed in each such registration, patent or application; (iv) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; 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.

**“Permits”** means permits, concessions, grants, franchises, licenses, qualifications, certificates, exemptions, and other governmental authorizations and approvals issued to Seller and ~~that are currently used exclusively~~ in the conduct of the Business or that relate ~~exclusively~~ to the Acquired Assets.

**“Permitted Lien”** means Liens of Seller’s pre-Petition Date secured lenders and post-Petition Date secured lenders ~~which, but only to the extent such~~ Liens ~~will be~~ released on or prior to the Closing of the Sale.

**“Person”** means an individual, a corporation, a partnership, a limited liability company, an association, a trust or other entity or organization.

**“Personal Property”** means tangible personal property other than Inventory, including production machinery, equipment, related spare parts, business machines, computer hardware and other IT assets other than Intellectual Property, office furniture and fixtures, in-factory vehicles, trucks and other tangible personal property, whether located at the Premises, at the place of business of a vendor or elsewhere.

**“Petition Date”** shall mean December 14, 2007.

**“Post-Closing Portion”** shall have the meaning set forth in Section 10.3.

**“Post-Petition Contracts”** means the Contracts of Seller entered into in the Ordinary Course of Business or approved by the Bankruptcy Court, in either case on or after the Petition Date.

**“Pre-Closing Portion”** shall have the meaning set forth in Section 10.3.

**“Premises”** means the suite of offices leased by PBTCC for the Business at 8081 Royal Ridge Parkway, Suite 130, Irving, TX 75063.

**“Product”** shall mean all products manufactured, marketed or sold and all services sold or otherwise provided by the Business.

**“Purchase Price”** means the payment referred to in Section 4.1.

**“Purchased Intellectual Property”** means all Owned Intellectual Property and Licensed Intellectual Property listed in Schedule 5.1.7.A.

**“Retained Liabilities”** shall have the meaning set forth in Section 2.3.

**“Sale”** means the sale of the Acquired Assets in accordance with the Sale Approval Order.

~~**“Sale Approval Order”** means an order or orders of the Bankruptcy Court approving the Sale issued pursuant to Sections 363 and 365 of the Bankruptcy Code in form and substance reasonably satisfactory to Purchaser, authorizing and approving, among other things, the sale, transfer and assignment of the Acquired Assets and Assumed Liabilities to the Purchaser in accordance with the terms and conditions of this Agreement, free and clear of all Liens other than, Permitted Liens and Liens encompassed within Assumed Liabilities assumed by Purchaser pursuant to Article 2, if any.~~

**“Sale Approval Order”** means an order of the Bankruptcy Court which is in form and substance reasonably acceptable to Seller and Purchaser approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transactions contemplated herein. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (a) pursuant to Section 363(f) of the Bankruptcy Code, the transfers of the Acquired Assets to the Purchaser (i) shall be legal, valid and effective transfers, (ii) shall vest in the Purchaser all of the respective rights, titles and interests of the Seller in and to the Acquired Assets, free and clear of all Liens of any Person whatsoever, known or unknown, fixed, liquidated, contingent or otherwise accruing on or

prior to the Closing, such Liens to attach to the Purchase Price, and (iii) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable state laws, (b) Purchaser has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby, (c) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm's length bargaining positions, (d) Purchaser is not acquiring or assuming any of Seller's or any other Person's liabilities except as expressly provided in this Agreement, (e) all Transferred Contracts shall be assigned to Purchaser pursuant to section 365 of the Bankruptcy Code, (f) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof, (g) this Agreement and the transactions contemplated herein shall be specifically enforceable against and binding upon, and not subject to rejection or avoidance by, each Seller or any trustee of a Seller and its applicable estate (h) the transfer of the Acquired Assets shall be without imposition or payment of any stamp tax, transfer tax or similar tax pursuant to the provisions of Section 1146(c) of the Bankruptcy Code, and (i) the provisions thereof are non-severable and mutually dependent and, pursuant to Bankruptcy Rules 6004(g) and 6006(d) shall not be stayed for 10 days and shall be effective immediately upon entry by the Bankruptcy Court.

“**Sale Motion**” means the motion filed with the Bankruptcy Court on January 31, 2008 seeking entry of the Sale Approval Order.

“**SDN List**” shall have the meaning set forth in Section 5.2.10.

“**Seller's Knowledge**” or “**Knowledge of Seller**” means, (i) with respect to Sections 5.1.5.B (Condition of Personal Property), 5.1.6 (Litigation) and 5.1.13 (Business Employees), the actual knowledge ~~(with no duty to investigate)~~ of Tom Wilkerson and Bradley Hutcherson; and, (ii) with respect to Section 5.1.7 (Intellectual Property), the actual knowledge ~~(with no duty to investigate)~~ of Nhan Nguyen and Larry Hollowood. In no event shall any of the foregoing individuals be personally liable for any representations or warranties made under this Agreement.

“**Software**” means computer software and programs, including, without limitation, source code, shareware, firmware, middleware, courseware, open source code, operating systems and specifications, system data, record and table layouts, databases, files documentation, storage media, manuals and other materials related thereto.

“**Straddle Period**” means any taxable period that begins on or prior to the Closing Date and ends after the Closing Date.

“**Tax Return**” means any return, declaration, report, claim for refund or information return, or statement, or any other similar filings, related to Taxes, including any Schedule or attachment thereto.

“**Tax(es)**” means any tax or similar governmental charge, impost or levy whatsoever (including, without limitation, income, franchise, transfer taxes, use, gross receipts, value added, employment, excise, ad valorem, property, withholding, payroll, social contribution, customs duty, minimum or windfall profit taxes or transfer fees), together with any related penalties, fines, additions to tax or interest, imposed by the United States or any state, county, local or foreign government or subdivision or agency thereof.

“**Technical Documentation**” means all documented technical information currently in the files of the Seller used exclusively to support the conduct of the Business.

“**Termination Date**” shall have the meaning set forth in Section 9.1.1.D.

“**Third Party Bailed Assets**” shall have the meaning set forth in Section 1.1.2.A.

“**Third-Party Requirements**” shall have the meaning set forth in Section 5.1.3.

“**Trade Secrets**” means: (i) all forms and types financial, business, scientific, technical, economic, manufacturing or engineering information, including patterns, plans, compilations, specifications, tooling, program devices, formulas, designs, prototypes, testing plans, methods, techniques, processes, procedures, programs, customer and vendor lists, pricing and cost data, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing, if: (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public, and confidential technical and business information (including ideas, formulas, compositions, inventions and conceptions of inventions whether patentable or un-patentable and whether or not reduced to practice); (ii) all copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; (iii) all rights to file and apply for, prosecute, defend and enforce any of the foregoing; and (iv) all rights to sue or recover and retain damages, costs and attorneys’ fees for present and past misappropriation of any of the foregoing.

“**Trademark Rights**” means: (i) trademarks, trade names and service marks; (ii) the good will associated with trademarks, trade names and service marks; (iii) registrations and applications for registration of trademarks, trade names and service marks; (iv) copies, files and tangible embodiments of all of the foregoing, in whatever form or medium; 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.

“**Transferred Contracts**” means the Contracts of Seller to be assigned to Purchaser at Closing as described in Section 2.1.1.

“**Transferred Employees**” shall have the meaning set forth in Section 3.1.2.

“**United States**” means the 50 states and the District of Columbia of the United States of America.

“**USA PATRIOT Act**” shall have the meaning set forth in Section 5.2.10.



**LIST OF SCHEDULES**

<b>SCHEDULE DESIGNATION</b>	<b>SCHEDULE DESCRIPTION</b>
A	Certain Defined Terms
1.1.1	Acquired Assets
1.1.2.A	Bailed Assets
1.1.2.E	Privileged Information and Materials
1.1.2.H	Other Excluded Assets
2.1.1	Transferred Contracts
4.2	Allocation of Purchase Price
5.1.1	Organization and Good Standing
5.1.3	Consents and Approvals
5.1.5.A	Title to Personal Property
5.1.6	Litigation
5.1.7.A	Intellectual Property
5.1.7.B	Intellectual Property Litigation Claims
5.1.7.C	Rights Granted to Third Parties
5.1.7.D	Free and Clear Owned Intellectual Property
5.1.7.E	Excluded Licenses
5.1.8	Insurance
5.1.12	Listed Contracts
5.1.13	Business Employees
6.2.3	Third Party Approvals
7.2.1	Assignment and Assumption Agreement
7.2.2	Bill of Sale

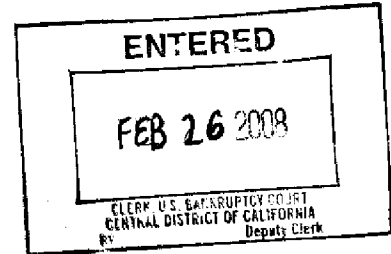
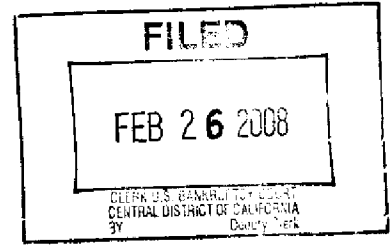
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Total changes	458

ORIGINAL



1 HENNIGAN, BENNETT & DORMAN LLP  
2 BRUCE BENNETT (Cal. Bar No. 105430)  
3 JAMES O. JOHNSTON (Cal. Bar No. 167330)  
4 JOSHUA M. MESTER (Cal. Bar No. 194783)  
5 LANCE MILLER (Cal. Bar No. 241905)  
6 865 South Figueroa Street, Suite 2900  
7 Los Angeles, California 90017  
8 Telephone: (213) 694-1200  
9 Fax: (213) 694-1234

10 *Reorganization Counsel for*  
11 *Debtors and Debtors in Possession*

12 UNITED STATES BANKRUPTCY COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 LOS ANGELES DIVISION

15 *In re*

Case No. 2:07-20027-TD

16 SOLIDUS NETWORKS, INC., d/b/a )  
17 PAY BY TOUCH, a/f/k/a PAY BY )  
18 TOUCH SOLUTIONS, a Delaware )  
19 Corporation, et al. )

CHAPTER 11

(Jointly Administered)

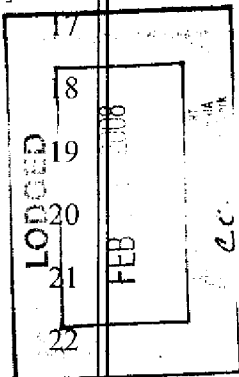
20 *Debtors.*

21 ~~PROPOSED~~ ORDER (I) AUTHORIZING SALE OF  
22 ASSETS RELATED TO THE ATM DIRECT  
23 BUSINESS FREE AND CLEAR OF LIENS,  
24 CLAIMS, AND ENCUMBRANCES,  
25 (II) AUTHORIZING THE ASSUMPTION AND  
26 ASSIGNMENT OF CERTAIN EXECUTORY  
27 CONTRACTS AND UNEXPIRED LEASES IN  
28 CONNECTION THEREWITH, (III) EXEMPTING  
SUCH SALE AND ASSIGNMENT FROM ANY  
STAMP TAX OR SIMILAR TAX AND  
(IV) GRANTING RELATED RELIEF

Hearing

Date: February 25, 2008  
Time: 9:30 a.m.  
Place: 255 East Temple Street  
Courtroom 1345  
Los Angeles, CA 90012

HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA



1 The Debtors include the following entities: Solidus Networks, Inc., d/b/a Pay By Touch, a/k/a Pay By Touch Solutions, a/f/k/a BioPay, Pay By  
2 Touch Payment Solutions, LLC, a/f/k/a EPX, a/f/k/a Payment Acquisition Corporation, a/f/k/a InterCept Payment Solutions, LLC, a/f/k/a SPS  
3 Payments, LLC, a/f/k/a IPS Solutions, LLC, a/f/k/a iPay, a/f/k/a Pay By Touch Solidus Merchant Services, Pay By Touch Processing, Inc.,  
4 a/f/k/a CSSI Acquisition Corporation, a/f/k/a Card Systems Solutions, Inc., Pay By Touch Check Cashing, Inc., Check Elect, Inc., Seven  
5 Acquisition Sub, LLC, a/f/k/a Seventh Street Software, Pay by Touch Checking Resources, Inc., Indivos Corporation, a/f/k/a Smart Touch, Inc.,  
6 a/f/k/a Veristar Corporation, a/f/k/a Indivos Acquisition Corporation, CardSystems Payment Solutions, LLC, Maverick International Services,  
7 Inc., and ATMD Acquisition Corporation, a/f/k/a ATMD Direct, a/f/k/a ATM Online, Inc.

1 This matter coming before the Court on the “Motion For Order (I) Authorizing Sale Of  
2 Assets Related To The ATM Direct Business Free And Clear Of Liens, Claims, And Encumbrances,  
3 (II) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired  
4 Leases In Connection Therewith, (III) Exempting Such Sale And Assignment From Any Stamp Tax  
5 Or Similar Tax And (IV) Granting Related Relief” (the “Motion”), filed by Solidus Networks, Inc.,  
6 d/b/a Pay By Touch, a/f/k/a Pay By Touch Solutions and its affiliated debtors and debtors in  
7 possession (collectively, the “Debtors”);<sup>2</sup> and

8 **NOW, THEREFORE**, after due deliberation and good cause appearing therefor;

9 **IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

10 A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C.  
11 §§ 157 and 1334.

12 B. Determination of the Motion is a core proceeding under 28 U. S. C. §§ 157(b)(2)(A),  
13 (D), (N), and (O). The statutory predicates for the relief requested in the Motion are sections 105,  
14 363, 365 and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

15 C. Proper, timely, adequate, and sufficient notice of the Motion, and of the proposed  
16 relief described therein, was given by the Debtors and such notice was reasonable and appropriate  
17 under the circumstances and comports in all regards with the requirements of due process,  
18 section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and the “Order  
19 (I) Approving Bidding Procedures In Connection With Sale Of Assets Related To The ATM Direct  
20 Business, (II) Approving The Form And Manner Of Notice, (III) Scheduling Auction And Sale  
21 Hearing, And (IV) Approving Procedures For Determining Cure Amounts,” entered  
22 February 7, 2008, (the “Bidding Procedures Order”).

23 D. The Basic Notice, Contract Counterparty Notice, and the Publication Notice, having  
24 been provided in accordance with the Bidding Procedures Order and the proofs of service and  
25

26 <sup>2</sup> Capitalized terms not otherwise defined in this Order have the meanings given to them in the  
27 Motion.

28 <sup>3</sup> When appropriate herein, findings of fact shall be construed as conclusions of law, and  
conclusions of law shall be construed as findings of fact. *See* Bankruptcy Rule 7052.

1 publication filed by the Debtors, the “Declaration Of Thomas Lumsden (A) Regarding Auction Of  
2 The ATM Direct Business And (B) In Support Of Motion For Order (I) Authorizing Sale Of Assets  
3 Related To The ATM Direct Business Free And Clear Of Liens, Claims, And Encumbrances, (II)  
4 Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired  
5 Leases In Connection Therewith, (III) Exempting Such Sale And Assignment From Any Stamp Tax  
6 Or Similar Tax And (IV) Granting Related Relief” dated February 24, 2008, having been filed and  
7 served, and the “Declaration Of Debora Darty In Support Of Motion For Order (I) Authorizing Sale  
8 Of Assets Related To The ATM Direct Business Free And Clear Of Liens, Claims, And  
9 Encumbrances, (II) Authorizing The Assumption And Assignment Of Certain Executory Contracts  
10 And Unexpired Leases In Connection Therewith, (III) Exempting Such Sale And Assignment From  
11 Any Stamp Tax Or Similar Tax And (IV) Granting Related Relief” dated February 24, 2008, having  
12 been filed and served no other or further notice of the foregoing or of the entry of this order is  
13 required.

14 E. As described in the Motion, the Debtors have taken commercially reasonable steps to  
15 communicate to the applicable market that the Acquired Assets were available for sale and to  
16 facilitate and encourage commercially reasonable expressions of interest in the Acquired Assets. As  
17 a consequence, the Debtors fully and adequately have marketed the Acquired Assets.

18 F. The sale of the Acquired Assets was conducted in accordance with the procedures  
19 approved pursuant to the Bidding Procedures Order, which procedures provided an opportunity for  
20 competitive bidding, thereby maximizing the value to be obtained for the Acquired Assets. Pursuant  
21 to the Sale Procedures Order, an auction of the Acquired Assets was conducted at the offices of  
22 Hennigan, Bennett & Dorman LLP, 865 South Figueroa Street, Suite 2900, Los Angeles, CA 90017  
23 on February 22, 2008, commencing at 10:16 a.m. (the “Auction”). At the Auction, the highest and  
24 best bid for the Acquired Assets was submitted by Accullink LLC on the terms and conditions set  
25 forth in the asset purchase agreement attached to the “Submission Of Executed Asset Purchase  
26 Agreement For The Sale Of Assets Related To The ATM Direct Business To Accullink, LLC” filed  
27 on February 25, 2008 (the “APA”), and therefore Accullink LLC (hereinafter the “Prevailing  
28

1 Bidder") was the prevailing bidder. The Auction conducted by the Debtors complied in all material  
2 respects with the Bidding Procedures Order and was fair and reasonable under the circumstances.

3 G. The Debtors have all requisite corporate power and authority necessary to enter into  
4 the APA and all other documents contemplated thereby, and the transactions provided for in the  
5 APA have been duly and validly authorized by all necessary corporate action of the Debtors. The  
6 Debtors have all the corporate power and authority necessary to consummate the transactions  
7 contemplated by the APA, and no consents or approvals other than those expressly provided for in  
8 the APA are required for the Debtors to consummate such transactions.

9 H. The Debtors' execution and delivery of the APA, and the consummation of the  
10 transactions contemplated thereby, including the provisions thereof with respect to: (i) the  
11 conveyance and assignment of the Acquired Assets free and clear of liens; and (ii) the sale,  
12 assumption and assignment, and assignment of the Assigned Contracts, reflect the exercise of the  
13 Debtors' sound business judgment, are proper exercises of the Debtors' fiduciary duties, are fair and  
14 reasonable, and are in the best interests of the Debtors, their creditors, and their estates. The total  
15 consideration to be realized by the Debtors under the APA represents fair consideration and  
16 reasonably equivalent value in the context of any state or federal law governing the rights of  
17 creditors. As a result, there exists good and sufficient business justification to consummate the  
18 transactions contemplated by the APA pursuant to sections 105, 363 and 365 of the Bankruptcy  
19 Code.

20 I. The transactions contemplated under the APA pursuant to section 363 and 365 of the  
21 Bankruptcy Code are exempt from the purview of all state laws protecting the rights of creditors,  
22 including, without limitation, state fraudulent transfer, fraudulent conveyance, preference, and bulk  
23 sale laws.

24 J. The conveyance and assignment of the Acquired Assets pursuant to the APA will be  
25 a legal, valid, and effective transfer of the Acquired Assets to the Prevailing Bidder, and will vest  
26 the Prevailing Bidder with all right, title and interest of the Debtors in and to the Acquired Assets  
27 free and clear of all mortgages, deeds of trust, security interests, conditional sale or other title  
28 retention agreements, pledges, liens (including without limitation, all liens of the Debtors' lenders in

1 the Acquired Assets), judgments, claims, demands, encumbrances, constructive or resulting trusts,  
2 or other encumbrances or charges of any kind or nature, if any, including but not limited to any  
3 restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of  
4 ownership pursuant to section 363(f) of the Bankruptcy Code (collectively, "Liens"), including the  
5 alleged Liens of those parties identified on Exhibit A hereto (collectively, the "Lienholders"). Sale  
6 of the Acquired Assets free and clear of all Liens is appropriate under section 363(f) in that (a) the  
7 Lien Holders have consented (or by their failure to object to the sale are deemed to have consented)  
8 to the transfer of the Acquired Assets free and clear of their respective prepetition and postpetition  
9 Liens pursuant to section 363(f)(2) of the Bankruptcy Code; and/or (b) such Lienholder could be  
10 compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest and  
11 such alleged Lien will attach to the proceeds of the sale of the Acquired Assets in the same right,  
12 validity and priority as existed prior to the sale, thereby allowing the Acquired Assets to be sold free  
13 and clear of such Lien pursuant to section 363(f)(5). As a result, all holders of any Liens shall be  
14 forever barred from asserting their Liens or any "Claims" (as defined under section 101(5) of the  
15 Bankruptcy Code) against the Prevailing Bidder, its nominees, designees, successors and assigns,  
16 and the Acquired Assets.

17 K. The failure to sell the Acquired Assets free and clear of Liens and Claims would  
18 impact adversely on Debtors' bankruptcy estates. Any attempt to sell the Acquired Assets other  
19 than free and clear of Liens and Claims would be of substantially less benefit to the Debtors' estates.

20 L. By virtue of the failure of any party in interest to file any objection to the proposed  
21 sale, assumption and assignment, or assignment, of the Assigned Contracts to Prevailing Bidder as  
22 provided in the APA, or to establish any cure amount due under sections 365(b)(A)(1) and (2) of the  
23 Bankruptcy Code, all objections to the sale, assumption and assignment, or assignment, of the  
24 Assigned Contracts, all such preexisting defaults, if any, other than the defaults recognized and  
25 agreed to by the Debtors as set forth on Exhibit B hereto, which defaults are to be cured by Debtors  
26 prior to or on the Closing Date under the APA, are deemed waived, and, upon the Closing Date, the  
27 other parties to such Assigned Contracts shall be estopped to raise and shall not assert any alleged  
28 uncured defaults under any Assigned Contract related to the Debtors' performance thereunder prior

1 to the Closing. Any party that may have had the right to consent to the assignment of its Assigned  
2 Contract is deemed to have consented to such assignment as required by section 365(e)(2)(A)(ii) of  
3 the Bankruptcy Code by its failure to object to the sale, assumption and assignment, or assignment  
4 and/or the Cure Amounts proposed by the Debtors to be paid at Closing.

5 M. The Debtors have alleged that the transfers to be made in connection with the APA  
6 are integral to, and are made in contemplation of, a plan or plans of reorganization that may be filed  
7 and confirmed by under section 1129 of the Bankruptcy Code, and thus should not be subject to law  
8 imposing a stamp tax, transfer fee, or similar tax pursuant to section 1146(c) of the Bankruptcy  
9 Code.

10 N. The APA was negotiated, proposed, and entered into by the parties without collusion,  
11 in good faith, and from arm's-length bargaining positions. The Prevailing Bidder is not an "insider"  
12 of the Debtors within the meaning of section 101(31) of the Bankruptcy Code, and Prevailing  
13 Bidder is unrelated to the Debtors in that there is no substantial similarity between or among the  
14 ultimate shareholders of the Debtors and the Prevailing Bidder. As a result, upon consummation of  
15 the transactions contemplated by the APA, the Prevailing Bidder will be a purchaser in "good faith"  
16 within the meaning of section 363(m) of the Bankruptcy Code, and, as such, is entitled to the  
17 protections afforded thereby. Neither the Debtors nor the Prevailing Bidder has engaged in any  
18 conduct that would cause or permit the APA, or the transfers contemplated thereby, to be avoided  
19 under Bankruptcy Code section 363(n). If the Debtors consummate the transactions contemplated  
20 by the APA absent a stay pending appeal of this Order, the reversal or modification on appeal of this  
21 Order shall not affect the validity of the contemplated transactions.

22 O. All objections, if any, to the approval of the APA, or to the transactions contemplated  
23 thereby, have been withdrawn, resolved or overruled.

24 **NOW, THEREFORE, IT HEREBY IS ORDERED THAT:**

25 1. The Motion is GRANTED.

26 2. The terms and conditions of, and the transactions contemplated by, the APA between  
27 the Debtors and the Prevailing Bidder are hereby authorized and approved in all respects; and,  
28 pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors hereby are fully



1 authorized and empowered to (a) execute, deliver, perform under, consummate, and implement the  
2 APA, (b) execute all additional instruments and documents that may be reasonably necessary or  
3 desirable to implement the APA and the transactions contemplated thereby, (c) take all further  
4 actions as may be necessary or appropriate for the purpose of assigning, transferring, granting or  
5 conveying the Debtors' interest in the Acquired Assets to the Prevailing Bidder as contemplated by  
6 the APA, and (d) take such other and further steps as are contemplated thereby to fulfill the Debtors'  
7 obligations thereunder or as may be necessary to effectuate the terms of this Order.

8 3. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, and Bankruptcy  
9 Rule 6004, upon the Closing of the APA, the Acquired Assets, including without limitation, all of  
10 the Debtors' right, title and interest (including common law rights) to all of their intangible property  
11 specified in the APA shall be sold, transferred, and assigned to the Prevailing Bidder free and clear  
12 of all Liens and Claims, including, without limitation, the Liens and Claims of the Debtors' lenders  
13 and the parties identified on Exhibit A hereto. The net proceeds of the Sale, after satisfaction of or  
14 reserve for any Cure Amounts, first shall be used to satisfy any outstanding "Postpetition  
15 Obligations" as defined in and required by this Court's "Final Order (I) Authorizing Debtors To  
16 Obtain Postpetition Financing Pursuant To Sections 363 And 364 Of The Bankruptcy Code, (II)  
17 Granting Liens And Superpriority Claims To Postpetition Lenders Pursuant To Section 364 Of The  
18 Bankruptcy Code, (III) Authorizing Use Of Cash Collateral Pursuant To Section 363 Of The  
19 Bankruptcy Code And (IV) Providing Adequate Protection To Prepetition Lenders And Gap Period  
20 Lenders Pursuant To Sections 361, 362, 363 And 364 Of The Bankruptcy Code" [docket # 246] (the  
21 "DIP Order"), which approved the "Senior Secured Superpriority Debtor In Possession Credit and  
22 Guaranty Agreement" governing the Debtors' postpetition financing, next as set forth in paragraph  
23 39 of the DIP Order, and thereafter any remaining proceeds shall be held in a segregated account  
24 with any valid, unavoidable, and enforceable Liens and security interests existing on the Acquired  
25 Assets as of the date of the closing, if any, to attach to such account with the same extent, validity  
26 and priority as such interests are now attached to any of the Acquired Assets; provided, however,  
27 that all such Liens shall be subject to the rights, Claims, defenses, and objections, if any, of the  
28 Debtors and all interested parties, except as limited by the DIP Order.

1           4.       Each and every federal, state and local governmental agency or department is hereby  
2 directed to accept any and all documents and instruments necessary and appropriate to consummate  
3 the transactions contemplated by the APA. A certified copy of this Order shall be accepted by any  
4 federal, state or local recording or filing authority as evidence of the discharge of all Liens and  
5 Claims against the Acquired Assets.

6           5.       As a result of the foregoing, all persons or entities, including any Governmental Unit,  
7 holding any Liens against the Acquired Assets or asserting any Claims against the Debtors are  
8 forever barred and estopped from asserting any such Liens or Claims against the Prevailing Bidder,  
9 the Acquired Assets, or any other assets of the Prevailing Bidder, except with respect to Assumed  
10 Liabilities under the APA. This Court shall retain exclusive jurisdiction to enforce this Order to bar  
11 the enforcement or assertion of any Liens or Claims against the Prevailing Bidder or the Acquired  
12 Assets.

13           6.       On and after the Closing Date and in accordance with the terms of the APA, the  
14 holders of Claims and Liens are directed to execute such documents and take all other actions as  
15 may be reasonably necessary to terminate and expunge such Liens and Claims against the Acquired  
16 Assets as such Claims or Liens may have been recorded or may otherwise exist. To the extent that  
17 any holder of Claims or Liens refuse to execute such documents as may be necessary to terminate  
18 and expunge any Liens and Claims against the Acquired Assets, the Debtors and Prevailing Bidder  
19 are authorized to take such actions, including without limitation, filing UCC-3 Termination  
20 Statements to release any Lien on the Acquired Assets. Any person having custody, control or  
21 possession of any of the Acquired Assets as of the Closing Date shall deliver such custody, control  
22 and possession of such Assets to the Prevailing Bidder.

23           7.       Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and Bankruptcy  
24 Rule 6004 and 6006, and in accordance with the APA, the Debtors are hereby authorized at Closing  
25 to sell, assume and assign to Prevailing Bidder the Assigned Contracts and to pay from the proceeds  
26 of sale the amounts set forth on Exhibit B hereto in full and complete satisfaction of the  
27 requirements of Bankruptcy Code sections 365(b)(1)(A) and (B). Effective as of the Closing Date,  
28 and upon the payment of the cure amounts as set forth on Exhibit B hereto with respect to the

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1 Assigned Contracts that are assumed and assigned, the Assigned Contracts shall be, and are (a) in  
2 full force and effect, with no defaults thereunder that need to be cured in connection with any  
3 assumption and assignment by the Debtors, and (b) valid, binding, and enforceable in accordance  
4 with their terms upon assignment to the Prevailing Bidder, notwithstanding any provision in any  
5 such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the  
6 Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. Upon  
7 consummation of such assignments and payment of the cure amounts required by this Order,  
8 pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall have no  
9 further liability for any breach of, or any other obligations arising under the Assigned Contracts.  
10 The foregoing sale, assumption and assignment, or assignment of the Assigned Contracts shall occur  
11 and be effective only upon Closing.

12 8. The consideration provided by the Prevailing Bidder for the Acquired Assets under  
13 the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code  
14 and under the laws of the United States, any state, territory or the District of Columbia.

15 9. The failure specifically to include any particular provisions of the APA in this Order  
16 shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the  
17 APA be approved in its entirety.

18 10. The APA and any related agreements, documents, or other instruments may be  
19 modified, amended, or supplemented by the parties thereto in accordance with the terms thereof  
20 without further order of the Court, provided that any such modification, amendment, or supplement  
21 is not material.

22 11. The APA, and all transactions contemplated thereby, shall be binding upon any  
23 successors in interest, including without limitation any chapter 11 trustee, chapter 7 trustee or other  
24 responsible officer appointed for any of the parties thereto.

25 12. The Prevailing Bidder is hereby granted the benefits and protections of section  
26 363(m) of the Bankruptcy Code, as a good faith purchaser and assignee, in connection with all the  
27 Acquired Assets, including the Assigned Contracts. No portion of the Acquired Assets, including  
28 any of the Assigned Contracts to be sold, assumed and assigned, or assigned pursuant to the APA,

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1 shall be severable for mootness or any other purpose from any other portion of the Acquired Assets,  
2 and the sale of the Acquired Assets shall constitute but one nonseverable transaction under section  
3 363 of the Bankruptcy Code.

4 13. This Court hereafter shall and does retain exclusive jurisdiction: (a) to interpret,  
5 construe, enforce and implement the terms and provisions of the APA and this Order, all  
6 amendments thereto, any waivers and consents thereunder, each of the agreements executed in  
7 connection therewith, and any and all disputes that may arise under the APA or this Order as  
8 between the Debtors and Prevailing Bidder; (b) to hear and determine any and all disputes between  
9 the Debtors and/or the Prevailing Bidder, as the case may be, and any third parties relating to the  
10 APA or any of the Assigned Contracts, concerning inter alia, the Debtors' assignment thereof to the  
11 Prevailing Bidder under the APA; (c) compel delivery and payment of the consideration provided  
12 for under the APA; (d) resolve any disputes, controversies or Claims arising out of or relating to the  
13 APA; and (e) interpret, implement, and enforce the provisions of this Order; provided, however, that  
14 in the event that this Court abstains from exercising or declines to exercise jurisdiction with respect  
15 to any matter provided for in this clause, or is without jurisdiction, such abstention, refusal or lack of  
16 jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of  
17 jurisdiction of any other court having competent jurisdiction with respect to any such matter.

18 14. The transfer of the Acquired Assets to the Prevailing Bidder is not subject to taxation  
19 under any state or local law imposing a stamp, transfer or similar tax in accordance with sections  
20 1146(c) and 105(a) of the Bankruptcy Code.

21 15. All objections to the Sale Motion and to the sale of assets to the Prevailing Bidder are  
22 overruled.

23 16. This Order shall be effective immediately upon its entry, and the 10-day stay  
24 provisions included in Bankruptcy Rule 6004(g) and 6006(d) are hereby waived.

25  
26  
27 Dated: February 26, 2008

  
THE HONORABLE THOMAS B. DONOVAN  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT A**

### **(Potential holders of liens or interests in the Acquired Assets)**

**Nothing herein shall be deemed to be an admission of the existence, validity, priority, perfection or extent of any interest that any of the parties included on this Exhibit C may have in the Acquired Assets.**

1800 West Loop Tower Assoc.  
The New England  
1800 West Loop  
Houston, TX 77027

Bank of New York, as Collateral Agent  
600 E. Colinas Blvd, Suite 1300  
Irving, TX 75039

Bank One, Texas N.A.  
6025 Eastex Frwy.  
Beaumont, TX 77706

CCI / Triad Corporation  
6207 Bee Caves Road  
Austin, TX 78746

CIB Bank  
900 East Higgins Road  
Elk Grove Village, IL 60007

Dell Financial Services, LP  
14050 Summit Drive, Bldg, A, Suite 101  
Austin, TX 78758

Denarius Touch, LLC (Bank of New York  
as Collateral Agent)  
c/o Farallon Capital Management, LLC  
One Maritime Plaza, Suite 1325  
San Francisco, CA 94111

Derace Shaffer  
c/o the IDE Group  
2273 South Clinton Avenue  
Rochester, NY 14618

Family Bank & Trust Co.  
10360 South Roberts Road  
Palos Hills, IL 55416

First Interstate BK OR, East PTLD BR  
612 SE Morrison St, Box 14809  
Portland, OR 97214

First National Bank  
PO Box 85625 (LA#90-59)  
San Diego, CA 92186

First USA Merchant Services, Inc  
1601 Elm Street, 6th Floor  
Dallas, TX 75201

Greg Brady  
4055 Valley View Lane, Suite 400  
Dallas, TX 75244

Highbridge International, LLC (Bank of  
New York as Collateral Agent)  
c/o Highbridge Capital Management, LLC  
9 West 57th Street, 27th Floor  
New York, NY 10019

International Card & Cash Exchange, Inc.  
5450 South Lake Shore, Suite 102  
Tempe, AZ 85283

John Pappajohn, as Collateral Agent for  
Holders of 6% Convertible Notes  
2116 Financial Center  
Des Moines, IA 50309

Kenneth R. Maliga  
7207 Oakbluff Drive  
Dallas, TX 75204

Leasing One Corporation  
PO Box 309  
Frankfort, KY 40601

M & I First National LC  
161 W. Wisconsin  
Milwaukee, WI 53201

Matsushita Electric Corp. of America  
1055 Westlakes Drive  
Berwyn, PA 19312

Michael R. Love  
PO Box 669  
Marble Falls, TX 78654

Mt. Vernon Investments, LLC  
5956 Sherry Lane, Suite 1350  
Dallas, TX 75225

NCR Corporation  
1700 South Patterson Blvd.  
Dayton, OH 45479

OZ Master Fund, Ltd. (Bank of New York  
as Collateral Agent)  
9 West 57th Street, 39th Floor  
New York, NY 10019

Paymentech Merchant Services, Inc.  
1601 Elm Street, 6th Floor  
Dallas, TX 75201

Plainfield Direct West III, LLC (Bank of  
New York as Collateral Agent)  
c/o Plainfield Asset Management  
411 West Putnam Avenue, Suite 340  
Greenwich, CT 06830

Sunrise International Leasing Corp  
5500 Wayzata Blvd, Suite 725  
Golden Valley, MN 55416

The CIT Group / Equipment Financing Inc.  
900 Ashwood Parkway  
Atlanta, GA 30338

The Herring National Bank  
PO Box 50488  
Amarillo, TX 79159

Tidel Engineering, Inc.  
2310 McDaniel Drive  
Carrollton, TX 75006

US Bancorp  
5500 Wayzata Blvd, Suite 725  
Golden Valley, MN 55416

Wells Fargo Bank  
177 Park Center Plaza  
San Jose, CA 95113

Whorl LLC (formerly BioPay LLC)  
c/o Cohen Mohr LLP  
1420 Beverly Road, Suite 380  
McLean, VA 22101

**EXHIBIT B**  
**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Cisco SecureACS Authentication Software Cisco Systems, Inc. 170 West Tasman Dr. San Jose, CA 95134	Purchased License Agreement	\$0.00
Encryption Software, Inc. 595 Bellemont Ct. Duluth, GA 30097	License agreement for encryption software.	\$0.00
Fiserv Solutions, Inc. dba Fiserv EFT 250 Johnson Road Morris Plains, NJ 07950	Service agreement dated as of 8/1/07 ("effective date") between Fiserv Solutions, Inc. and ATMD.	\$ 5,734.04
Geopoint Server - Quova, Inc 333 W. Evelyn Avenue Mountain View, CA 94041	Unlimited queries for fixed monthly cost	\$0.00
GWI Soft 10000NE 7th Ave Suite 401 Vancouver, WA 98685	Service Desk	\$0.00
HP Atalla Cryptography and Hardware Security Modules 3000 Hanover St. Palo Alto, CA 94304	Unlimited Use License specific to hardware device	\$0.00
HP/Compaq/Atalla 3000 Hanover Street Palo Alto, CA 94304-1175	License agreement for software.	\$0.00
Idera BBS Technology Inc 802 Lovett Blvd Houston, Tx 77006	Database tools for production systems	\$ 4,536.77
Internet Security Systems IBM North America 590 Madison Avenue New York, NY 10022	Software licenses transfer agreement dated as of December 7, 2005 between Pay by Touch/ATMD and Internet Security Systems.	\$0.00
Iron Mountain Intellectual Property Management Atlanta Processing Office 2100 Norcross Pkwy, suite 150 Norcross, GA 30071  DES Technology Escrow Services, Inc. 9265 Sky Park Court, Suite 202 San Diego, CA 92123	Intellectual Property Development Protection Agreement entered on Feb 10, 2004 between DSI technology Escrow Services, Inc. (a subsidiary of Iron Mountain) and ATMD.	\$ 4,173.53
McAfee, Inc. General Counsel 5000 Headquarters Drive Mail Stop 1S262 Plano, Texas 75024	OEM software License Agreement entered as of July 27, 2007 ("effective date:") between McAfee, Inc and ATMD.	\$0.00

**EXHIBIT B**  
**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Melissa Data 22382 Avenida Empresa Rancho Santa Margarita, CA 92688-2112	License agreement for address reference data software.	\$0.00
Microsoft Visual Studio Development Suite Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399	Limited use license per install	\$0.00
Microsoft Windows Family (2000 Server, 2003 Server, XP, Vista) Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399	Limited use license per install	\$0.00
Mosaic Software 800 Fairway Drive, Suite 198 Deerfield Beach, FL 33441	License agreement for software dated May 16, 2002.	\$ 76,109.89
nCipher Cryptography and Hardware Security Modules 500 Unicom Park Drive Woburn, MA 01801-3371	Unlimited Use License specific to hardware device	\$0.00
nCipher Inc. 500 Unicom Park Drive Woburn, MA 01801-3371 nCipher Corporation, Ltd. Jupiter House, Station Road Cambridge CB12JD, England	License agreement for encryption solution software.	\$0.00
NYCE Payments Networkd, LLC 400 Plaza Drive, 2nd floor Secaucus, New Jersey 07094	Data processing services agreement between NYCE Payments Network, LLC and Pay by Touch. Effective date 12/14/2006.	\$ 10,918.73
Postillion Server Software - SI Corporation 705 Westech Drive Norcross, GA 30092	Limited use license per EFT direct connect	\$0.00
Pulse EFT Association 1301 McKinney, Suite 2500 Huston, TX 77010	Processor sponsoring agreement.	\$ 2,500.00
Quova, Inc. 333 W. Evelyn Avenue Mountain View, CA 94041	License agreement dated January 23, 2003.	\$ 8,000.00
RSA SecurID Authentication 174 Middlesex Turnpike Bedford, MA 01730	Purchased License Agreement	\$745.00
Shamus Software, Inc. 4 Foster Place North Ballybough, Dublin 3 Ireland	Pending License Agreement	\$0.00



**EXHIBIT B**  
**SCHEDULE OF ASSIGNED CONTRACTS AND CURE AMOUNTS**

<b>CONTRACT PARTY</b>	<b>DESCRIPTION</b>	<b>CURE AMOUNT</b>
Star Networks, Inc 1100 Carr Road Wilmington, Delaware 19809	Processor Agreement dated Sept 28, 2006 between Star Networks, Inc. and Solidus.	\$0.00
Verisign, Inc 487 E. Middlefield Road, M/S MV 6-2-1 Mountain View, CA 94043	Digital Certificates (VPN SSL)	\$ 2,480.00

**NOTE TO USERS OF THIS FORM:**

*Physically attach this form as the last page of the proposed Order or Judgment.  
Do **not** file this form as a separate document.*

In re SOLIDUS NETWORKS, INC.	Debtor.	CHAPTER 11 CASE NUMBER 07-20027-TD
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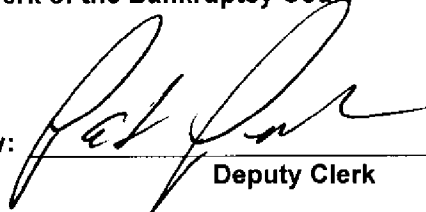
**NOTICE OF ENTRY OF JUDGMENT OR ORDER  
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(a)(1)(E), that a judgment or order entitled (specify): ~~PROPOSED~~ ORDER (I) AUTHORIZING SALE OF ASSETS RELATED TO THE ATM DIRECT BUSINESS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH, (III) EXEMPTING SUCH SALE AND ASSIGNMENT FROM ANY STAMP TAX OR SIMILAR TAX AND (IV) GRANTING RELATED RELIEF  
was entered on (specify date): *2/26/08*
2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date): *2/26/08*

Dated: *2/26/08*

JON D. CERETTO  
Clerk of the Bankruptcy Court

By:   
Deputy Clerk

**SERVICE LIST**

United States Trustee  
725 South Figueroa Street, 26<sup>th</sup> Floor  
Los Angeles, CA 90017

Jeffrey C. Krause, Esq.  
Gary Klausner, Esq.  
Stutman Treister & Glatt  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, CA 90067  
***Counsel to Creditors' Committee***

James O. Johnston, Esq.  
Hennigan Bennett & Dorman LLP  
865 South Figueroa Street, Suite 2900  
Los Angeles, CA 90017  
***Counsel to Debtors Solidus Networks, Inc.***

Ben H. Logan  
Karen Rinehart  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
***Counsel to OZ Master Fund, Ltd. and  
Denarius touch, L.L.C.***

Mark Shinderman  
Alan Friedman  
Seth Goldman  
Mark Epstein  
Munger, Tolles & Olsen LLP  
355 South Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071-1560  
***Co-Counsel to Plainfield Special Situations  
Master Fund Limited and Plainfield West  
Investments LLP***