

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM429933

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
RESTAURANT RESULTS, INC.		12/18/2015	Corporation: PENNSYLVANIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	JORDAN GILMORE, INC.		
<b>Doing Business As:</b>	HYRELL		
<b>Street Address:</b>	1610 ADAMS AVENUE		
<b>City:</b>	DUNMORE		
<b>State/Country:</b>	PENNSYLVANIA		
<b>Postal Code:</b>	18512		
<b>Entity Type:</b>	Corporation: PENNSYLVANIA		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3981389	WYCKWYRE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	5703426147		
<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>Phone:</b>	5703426100		
<b>Email:</b>	kclark@mbklaw.com		
<b>Correspondent Name:</b>	KRISTEN MACKRELL CLARK		
<b>Address Line 1:</b>	425 SPRUCE STREET SUITE 200		
<b>Address Line 4:</b>	SCRANTON, PENNSYLVANIA 18503		
<b>NAME OF SUBMITTER:</b>	KRISTEN MACKRELL CLARK		
<b>SIGNATURE:</b>	/KRISTEN MACKRELL CLARK/		
<b>DATE SIGNED:</b>	06/05/2017		
<b>Total Attachments: 28</b>			
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## **AGREEMENT FOR THE PURCHASE AND SALE OF ASSETS**

This **ASSET PURCHASE AGREEMENT** (the "Agreement") is made this 18<sup>th</sup> day of December, 2015, by, between and among RESTAURANT RESULTS, INC. d/b/a WYCKWYRE, a Delaware Corporation with its principal place of business at 101 Broome Corporate Parkway, Conklin, New York 13748 ("Seller"), MAINES PAPER & FOOD SERVICE, INC., with its principal place of business at 101 Broome Corporate Parkway, Conklin, New York 13748 ("Shareholder"), and JORDAN GILMORE, INC. d/b/a HYRELL, a Delaware Corporation with its principal place of business at 1610 Adams Avenue, Dunmore, Pennsylvania 18509, ("Buyer"). Seller, Shareholder and Buyer are referred to herein as individually as a "Party," and collectively as the "Parties."

### **RECITALS**

A. Buyer is a software company that provides SaaS-based online personnel recruiting and hiring systems to its customers ("Hyrell Software").

B. Seller is a foodservice industry consultant that offers, among other services, human resource recruiting and hiring services to the foodservice industry through its WyckWyre division wherein Seller licenses the Hyrell Software system to certain of its customers in the foodservice industry through its WyckWyre division (the "Business").

C. Shareholder owns one hundred percent (100%) of the issued and outstanding capital stock of Seller.

D. Buyer desires to purchase certain assets of Seller associated with the Business and Seller desires to sell such assets to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer, Seller and Shareholder, intending to be legally bound, agree as follows:

### **1. PURCHASE OF SELLER'S ASSETS BY BUYER**

1.1. *Sale and Purchase of Assets.* Subject to the terms and conditions hereof, at the Closing (as hereinafter defined), Seller shall sell, transfer, assign and deliver to Buyer and Buyer shall purchase from Seller all assets of Seller of every nature and kind owned by Seller and used in the operation of the Business, other than the Excluded Assets (as hereinafter defined), which assets are collectively referred to hereinafter as the "Purchased Assets" and include, but are not limited to, the following:

(a) all technology, software and intellectual property owned by Seller, including all patents, copyrights, trademarks and servicemarks and all technology, software and intellectual property in planning stages, under development or contracted for development;

(b) all rights of Seller to the name "WyckWyre", including, without limitation, all rights of Seller to the use of the name "WyckWyre", including any abbreviations and derivations thereof, and all rights of Seller to any "WyckWyre" logos, trade names and brands of Seller;

(c) any right, title and interest which Seller has or may have in the customer lists (active and non-active) and customer account contracts for purposes of conducting the Business (the "Customer Accounts");

(d) all contracts of Seller relating to the Business and operations of the Business, to the extent set forth on **Schedule 1.1(d)** ("Assigned Contracts");

(e) copies of all operating data in the possession of Seller, telephone numbers, facsimile numbers, sales contacts, Customer Relationship Management information, trade suppliers, trade supplier histories, websites, and URLs used currently or in the past by Seller in connection with the Business, books, files, documents and records of Seller relating to the Business, including, without limitation, customer lists, vendor lists, financial, accounting and credit records, marketing information, correspondence, budgets and other similar documents and records which relate to the Business;

(f) Any pro-rated amounts due from pre-paid customers as of the date of Closing, as set forth on **Schedule 1.1(f)**;

(g) Assignment of administrative control of all information systems utilized by Seller in the Business, including but not limited to Salesforce, Slack, CRM, ticket support and internal communication controls not run through the Maines Paper & Food Service, Inc. Enterprise Resource Planning ("ERP");

(h) The trade show equipment and supplies and marketing materials set forth on **Schedule 1.1(h)**;

(i) Accounts Receivable related to the Business, as set forth in Section 2.5;

(j) any and all goodwill related to the foregoing.

1.2. ***Excluded Assets.*** The following assets of Seller (the "Excluded Assets") are not included in the purchase and sale hereunder:

(a) all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills and other cash equivalents and securities, bank and financial accounts of Seller and the consideration paid hereunder to Seller;

(b) all refunds or credits, if any, of payments of taxes by Seller, including with respect to the Purchased Assets or the Business for taxable periods (or portions thereof ending on or before the Closing Date), and any entitlement or claims thereto;

(c) Seller's corporate seal, corporate minute books, stock books and register, share certificates and other corporate records relating solely to the formation or capitalization and other corporate matters of Seller, tax returns, tax preparation workpapers, financial statements and personnel records, and books and records relating to the Excluded Assets and Excluded Liabilities;

(d) Seller's rights pursuant to this Agreement (including all exhibits hereto);

(e) Rights, claims and defenses of Seller against third parties arising from, related to or in connection with Excluded Assets or Excluded Liabilities;

(f) Any assets, property, equipment, machinery, formulas, processes, furniture and assets owned, licensed, leased or otherwise in possess of Seller not used in the Business or otherwise specifically identified in Section 1.2, including software, trademarks, trade names, service marks and other intellectual property used in other divisions or operations of Seller ;

(g) Any entire inventory of Seller, consisting of raw materials, work-in-process and finished goods related to the Business owned by Seller on the Closing Date (as defined herein) (the "Inventory");

(h) Accounts Receivable related to the Business as set forth in Section 2.5;  
and

(i) Any contracts not assigned as described on **Schedule 1.1(d)**.

1.3. ***Assumed Liabilities.*** It is expressly understood that Buyer shall not assume any liabilities related to the Business other than those liabilities arising or accruing under the Assigned Contracts after the Closing Date (the "Assumed Liabilities").

1.4. ***Excluded Liabilities.*** Except as specifically set forth in Section 1.3 hereof, Buyer is not assuming, adopting, or taking over and shall not be deemed to have assumed, adopted or taken over, any obligation, liabilities or responsibilities of Seller and/or Shareholder inclusive of, but not limited to, the following (the "Excluded Liabilities"):

(a) any liability of Seller and/or Shareholder for federal, state or local taxes of any nature or description;

(b) any liability or obligation of Seller and/or Shareholder for damages with respect to any breach of, or default in the performance by Seller and/or Shareholder of, any agreement including product liability, arising prior to the Closing;

(c) any liability for claims of creditors for debts incurred by Seller and/or Shareholder;

(d) any liability or obligation, contingent or otherwise, arising out of a threatened or pending claim, investigation or litigation involving Seller and/or Shareholder;

(e) any accrued obligations in connection with the Excluded Liabilities or Seller's insurance policies;

(f) any liability or obligation in respect of any retirement, IRA or Keogh plan of Seller or any breach of fiduciary duty under any retirement, IRA or Keogh plan of Seller or Shareholder (for Seller's employees), any prohibited transaction under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code") or ERISA and any COBRA liability that, in each case, has its basis any event, act, occurrence or omission by Seller that is not fully covered by (i) applicable policy of insurance paid or payable to Buyer, or (ii) a reserve or accrual set forth on the Closing Balance Sheet (as defined herein) that in any way arises from, without limitation, products purchased, sold, distributed, brokered or otherwise associated with Seller on or prior to the Closing Date;

(g) any liabilities or obligations of Seller and/or Shareholder to any bank or finance company or any other person under any note, covenant, agreement or instrument for the payment of money;

(h) any liability relating to the transactions contemplated by this Agreement, including any legal or other advisory fees;

(i) any liability arising from, incidental to or in connection with an Excluded Asset;

(j) any liability of Seller related to the Business arising from services or products it provided to its customers prior to the Closing Date;

(k) any breach, default or violation of contracts, leases or applicable law that has as its basis any event, act, occurrence or omission on or prior to the Closing Date;

(l) any claims by current or former employees employed by Seller that have as their basis any event, act, occurrence or omission of or by Seller, or its officers, employees, agents, directors and Shareholder, including the transactions contemplated by this Agreement; and

(m) any liability that does not directly arise from the ownership of the Purchased Assets or operations of the Business and is not an assumed Liability.

## 2. PURCHASE PRICE.

2.1. ***Purchase Price.*** The purchase price for the Purchased Assets shall be equal to **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000)** (the "Purchase Price").

2.2. ***Payment of Purchase Price.*** The Purchase Price shall be paid as follows:

(a) At the Closing, Buyer shall deliver to Seller by wire transfer of immediately available funds to an account or accounts designated by Seller in writing the sum of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**; and

(b) At the Closing, Buyer shall deliver to Seller a promissory note of Buyer, in the principal amount of **ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000)**, in the form attached hereto **Schedule 2.2(b)** (the "Note").

(c) Any state, county and local sales tax resulting from the transaction contemplated by this Agreement shall be paid by Buyer. Buyer shall remit payment of the sales tax to the New York State Department of Taxation and shall provide Seller with a copy of its check for such amount at Closing.

The Parties agree that the Purchase Price shall be allocated among the Purchased Assets as set forth on **Schedule 8.2** attached hereto and incorporated herein.

2.3. ***Pledge of Security for Purchase Price.*** In consideration of the Note, and as security for Buyer's payment obligations under the Note, Buyer shall grant Seller a continuing first priority security interest in the Purchased Assets and all other assets of Buyer. At the Closing, Seller and Buyer shall execute and deliver a Security Agreement (the "Security Agreement") in the form of **Schedule 2.3** attached hereto, and Buyer hereby authorizes Seller to file such Uniform Commercial Code financing statements (the "Financing Statements") as Seller may require.

2.4. ***Purchase Price Reduction.*** From the Closing Date through and including June 30, 2016, the Parties agree that if any member of the Bridgeman Group (known in the Seller's customer account lists as Bridgeman Wendy's, VAB Wendy's, WMilco Wendy's, and ERJ Chili's) or any related party, affiliate or subsidiary of such entities (all of which are collectively referred to herein as the "Bridgeman Group") terminate any of their contracts with WyckWyre, despite the good faith efforts of Buyer to retain the business, for any reason other than WyckWyre's refusal to perform technical enhancements reasonably requested by the Bridgeman Group or service level deficiencies, then the Purchase Price shall be reduced by an amount equal to the current monthly contract rate (as of the date of termination) of the Bridgeman Group contract to be terminated multiplied by 12 (the "Purchase Price Reduction"). The Purchase Price Reduction shall be deducted from Buyer's next payment due under the Note.

2.5. ***December 2015 Revenue.*** For any accounts receivable of Seller attributable to services rendered for the Business through and including November 30, 2015, Seller shall be entitled to receive all such accounts receivable. For any payments received by Seller or Buyer related to the Business and attributable to services rendered from December 1, 2015 through and including December 31, 2015, regardless of when such payment is received, Seller shall be entitled to 58.06% of any such payment and Buyer shall be entitled to 41.94% of any such payment. For any payments related to the Business and attributable to services rendered on or after January 1, 2016, Buyer shall be entitled to receive all such payments whether received by

Seller or Buyer and regardless of when such payment is received. Each party will maintain complete and accurate records of all payments received attributable to services rendered from December 1, 2015 through December 31, 2015. At Closing, Buyer shall receive a credit from the Purchase Price for 41.94% of the amounts received by Seller as of the Closing Date. Thereafter, each party will provide weekly updates to the other party on any amounts received that are attributable to the December 1, 2015 through December 31, 2015 period. Seller shall remit to Buyer 41.94% of any such amounts received by Seller and Buyer shall remit to Seller 58.06% any amounts received by Buyer for this time period concurrently with providing the weekly updates.

### **3. THE CLOSING; TRANSFER PROCEDURES**

3.1. **Closing.** The closing of the transaction contemplated herein (the "Closing") will take place simultaneously with the execution and delivery of this Agreement subject to the satisfaction of all conditions to each Party's obligation to close under this Agreement by the obligated Party or a waiver thereof by the Party entitled to waive such condition and payment of the Purchase Price. The closing shall take place on or about December 18, 2015, unless another date is agreed to by the Parties (the "Closing Date").

3.2. **Closing Documents of Seller.** At Closing, Seller shall deliver to Buyer:

- (a) this Agreement, executed by Seller and the Shareholder;
- (b) a Bill of Sale in the form attached hereto as **Schedule 3.2(b)** as shall be effective to vest in Buyer good and marketable title to the Purchased Assets free and clear of any liens or encumbrances;
- (c) such endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Buyer's counsel, as shall be effective to vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets;
- (d) Intentionally Omitted;
- (e) Seller's Resolution and Shareholder's Consent in the form attached hereto as **Schedule 3.2(e)**, containing a certified copy of the resolution of the Board of Directors of Seller authorizing the Agreement and the transactions contemplated herein and (ii) a written consent to the proposed purchase executed by the Shareholder, respectively;
- (f) an Assignment and Assumption Agreement, in the form attached hereto in **Schedule 3.2(f)** (the "Assignment and Assumption Agreement"), duly executed by Seller, to assign to Buyer, and by which Buyer assumes, the Assigned Contracts;
- (g) Certificates of good standing for Seller dated within ten (10) business days prior to the Closing Date issued by the State of Delaware and the State of New York;



(h) the documents by which Seller shall promptly upon and after the Closing Date withdraw its use of the names identified on **Schedule 3.2(h)** and any and all derivatives thereof, in all jurisdictions in which Seller registered or filed such name to do business in lieu of its statutory corporate name;

(i) UCC-3 releases of any encumbrances on any Purchased Assets by any financial institutions or other lenders of Seller;

(j) All consents set forth on **Schedule 3.2(j)** attached hereto approving the transfer of any Purchased Asset or the assumption of any Assumed Liability required by the terms of the contract (without charge to Buyer or material change to the term of the contract);

(k) The assignments and/or non-competition/non-disclosure agreements set forth in Section 7.4(d);

(l) The Amendment of Stock Purchase Agreement set forth in Section 8.13; and

(m) Such other documents and items as are reasonably necessary or appropriate to effect the consummation of the transactions contemplated hereby or which may be customary under local law.

3.3. **Closing Documents of Buyer.** At Closing, Buyer shall deliver to Seller:

(a) this Agreement, executed by Buyer;

(b) the funds referred to in Section 2.2(a) of this Agreement;

(c) the Note, duly executed by Buyer;

(d) Intentionally Omitted;

(e) Buyer's Resolution and Buyer's Shareholders' Consent in the form attached hereto as **Schedule 3.2(e)**, containing a certified copy of the resolutions of the Board of Directors of Buyer authorizing the Agreement and the transactions contemplated herein and (ii) a written consent to the proposed purchase executed by the shareholders of Buyer, respectively;

(f) The non-competition/non-disclosure agreements set forth in Section 7.4(d);

(g) The Assignment and Assumption Agreement duly executed by Buyer;

(h) Certificates of good standing for Buyer dated within ten (10) days prior to the Closing Date issued by the State of Delaware and the Commonwealth of Pennsylvania;

(i) The Security Agreement and Financing Statements; and

(j) Such other documents and items as are reasonably necessary or appropriate to effect the consummation of the transactions contemplated hereby or which may be customary under local law.

#### 4. **REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Buyer that each and all of the following representations and warranties (as modified by the Schedules to this Agreement (the "Schedules")) are true and correct:

4.1. ***Power and Authority.*** Seller has full power and authority to execute and deliver this Agreement and such other agreements and instruments as are to be executed and delivered by Seller pursuant hereto and to consummate the transactions contemplated hereby and thereby.

4.2. ***Corporate Acts.*** All proceedings required to be taken by or on the part of Seller to authorize it to execute, deliver and perform this Agreement and such other agreements and instruments as are to be executed and delivered by Seller pursuant hereto have been duly and properly taken.

4.3. ***Due Organization and Good Standing.*** Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Seller is duly authorized and qualified to do business under all applicable laws, regulations, ordinances and orders of public authorities and to carry on its business in the states and jurisdictions and in the manner as now conducted. **Schedule 4.3** sets forth the list of those states and jurisdictions in which Seller is authorized to conduct the Business.

4.4. ***Execution and Delivery.*** This Agreement has, and such other agreements and instruments as shall be executed and delivered by Seller pursuant hereto shall be, duly executed and delivered by Seller and constitute the legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms.

4.5. ***No Violation.*** Seller has full power and authority to sell, assign, transfer, convey and deliver to Buyer the Purchased Assets to be sold hereunder. The execution, delivery and performance by Seller of this Agreement will not (i) to the Knowledge of Seller, violate any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree, determination or any order of any court or other agency of government; or (ii) conflict with, or result in a breach of, any of the terms, conditions, or provisions of, or constitute a default under, any indenture, agreement or other instrument to which Seller is a party or by which Seller is bound.

4.6. **Clear Title.** Except as set forth on Schedule 4.6, (i) Seller has good title to the Purchased Assets and (ii) the Purchased Assets are free and clear of any and all claims, pledges, title defects, liens, encumbrances, obligations, liabilities, charges or equities.

4.7. **No Approval.** Except as set forth on Schedule 4.7 attached hereto, no approval, authorization, consent or other order or action of or filing with any court, administrative agency, other governmental authority, or other third party is required for the execution and delivery by Seller of this Agreement or such other agreements or instruments, or consummation of the transactions contemplated hereby or thereby.

4.8. **Trade Name.** Seller has operated the Business with respect to the Purchased Assets solely in the names "WyckWyre" and "Restaurant Results, Inc.". No claims have been made against Seller regarding the use of such names.

4.9. **Litigation.** There are no claims, actions, suits or proceedings, pending or, to the Knowledge of Seller, threatened against or affecting Seller, or in which Seller asserts claims against any other party, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over Seller. No notice of any such claim, action, suit or proceeding, whether pending or to the Knowledge of Seller, threatened against or affecting Seller, has been received by Seller.

4.10. **Compliance with Laws.** Seller is in compliance with all federal, state and local laws, rules, regulations, codes, licenses, permits and orders relating to the Business and has all licenses and permits required for the proper conduct of the Business.

4.11. **Taxes.**

(a) Seller has filed all federal, state and local tax returns required to be filed, pertaining to Seller or the Business, and all such tax returns are true, correct and complete in all material respects. The tax returns have accurately reflected and will accurately reflect any liability for taxes of Seller for the periods covered thereby.

(b) All taxes due or collectible by or for any governmental agency from Seller have been paid in full or adequately accrued and provided for by reserve. Seller is not delinquent in the payment of any tax, nor has Seller requested any extension of time within which to file any tax returns that have not since been filed, and no deficiencies for any tax have been claimed, proposed or assessed which remain outstanding.

(c) All amounts required to be withheld from employees or other persons by Seller have been properly withheld and deposited or otherwise disposed of pursuant to the applicable provisions of federal, state or local laws, rules or regulations, and all contributions required to be paid or otherwise due and payable by Seller have been paid pursuant to all applicable provisions of federal, state or local law, rules or regulations, regarding income tax withholding or social security, worker's compensation, unemployment compensation or similar taxes or contributions.

(d) Seller has not been the subject of a dispute or claim or an audit or other examination of taxes by any tax authority, nor has Seller received any notices from any tax authority relating to any issue.

(e) Seller has not entered into any agreement or waiver or been requested to enter into any agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of Seller. Seller is not presently contesting any tax liability of Seller before any governmental body.

(f) There is no tax sharing, allocation, indemnification or other similar agreements in effect as between Seller or any predecessor or affiliate thereof and any other party under which Buyer or Seller could be liable for any taxes or other claims of any person.

(g) Seller has not applied for, been granted, or agreed to any accounting method change for which it will be required to take into account any adjustment under Section 481 of the Code or any similar provision of the Code or the corresponding tax laws of any nation, state or locality.

(h) Seller has not been party to any agreement that would require it to make any payment that would constitute an "excess parachute payment" for purposes of Sections 280G and 4999 of the Code.

(i) For purposes of this Agreement, the term "tax" includes all governmental taxes, assessments or related governmental charges.

#### **4.12. *Labor Contracts and Disputes; Employee Benefits.***

(a) Seller is not a party to a collective bargaining agreement with any labor union. There has never been and there is not presently (i) any strikes, work stoppages, grievance proceedings or other labor disputes pending or threatened pertaining to the operation or maintenance of the Business or any part thereof, or (ii) any application or complaint filed by any Seller employee or union with the National Labor Relations Board, or any comparable governmental body. There is no lockout of any employees of Seller and no such action is contemplated by Seller. There is no proceeding pending or threatened by any person against Seller or any of its current or former officers, directors or employees, relating to employment, equal employment opportunity, discrimination, harassment, wrongful discharge, unfair labor practices, immigration, wages, hours, benefits, collective bargaining, the payment of social security or similar taxes, occupational safety and health or plant closing.

(b) Seller does not sponsor, maintain or contribute to any benefit plan and there are no pension plans, welfare plans or employee benefit plans qualified under Section 401(a) of the Code to which Seller is required to contribute. Seller does not and will not have any unfunded liability for services rendered prior to the Closing Date under any benefit plans with respect to the Business. Seller is not in default under any benefit plan.

4.13. **Licenses of Seller.** Set forth on **Schedule 4.13** of this Agreement is a full and complete list of all registrations, licenses, permits, approvals, qualifications, or the like, issued or to be issued to Seller in connection with the Business by any government or any governmental unit, agency, body or instrumentality, whether federal, state, local or other. No other registrations, licenses, permits, approvals, qualifications or the like are necessary to conduct the business of Seller as it is now being conducted. Except as set forth on **Schedule 4.13**, no registration with, approval by, clearance from or personification to any governmental agency is required in connection with the execution and performance of this Agreement by Seller.

4.14. **Assets of Seller.** The Purchased Assets (i) have in all material respects been properly maintained, (ii) are in good operating condition and repair, subject to ordinary wear and tear, and (iii) are all the assets used, and necessary to operate the Business as currently conducted.

4.15. **Operations of Seller Post-Closing.** The Business is one of Seller's three operating divisions. Seller represents and warrants that following the Closing, Seller shall continue to operate the other two divisions of Seller (the "Remaining Divisions") and has no current plans to discontinue the other two divisions or sell all or substantially all of the assets of the Remaining Divisions.

4.16. **Financial Statements.** Attached as **Schedule 4.16** are true and correct copies of financial statements for the Business for years 2012, 2013, 2014 and the 10-month period ending November 30, 2015 (the "Financial Statements"). The Financial Statements are true and correct in all material respects and fairly present the financial position and condition of the Business as of their respective dates and the results of its operations for the periods covered in accordance with GAAP applied by Seller on a consistent basis throughout the periods covered thereby and on a basis consistent with that of prior years and periods.

4.17. **Absence of Certain Events.** Except for the transaction contemplated by this Agreement and except as provided on **Schedule 4.17**, since December 31, 2014, Seller has conducted the Business only in the ordinary course of business.

4.18. **Intellectual Property.**

(a) **Schedule 4.18(a)** to this Agreement lists (1) each item of Seller-owned Intellectual Property (by name, owner and where applicable, registration number and jurisdiction of registration, application, certification or filing) that is the subject of a registration or pending application, and (2) each item of material unregistered Seller-owned Intellectual Property.

(b) Seller (1) owns all right, title and interest, free and clear of all liens, pledges, security interest, transfer restrictions and other encumbrances, to all Seller-owned Intellectual Property, and (2) rightfully uses or otherwise enjoys all of the Licensed Intellectual Property pursuant to the terms of a valid and enforceable license.

(c) Seller has taken commercially reasonable steps to protect the Seller-owned Intellectual Property and the Licensed Intellectual Property. Seller has materially complied with

all of its obligations of confidentiality in respect of the claimed trade secrets or proprietary information of others and knows of no violation of such obligations of confidentiality as are owed to it.

(d) None of Seller's respective employees, officers, directors, agents or consultants (1) has breached or violated confidentiality restrictions in favor of any third person, the breach or violation of which could subject Seller to any material liability, or (2) is obligated under any agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with their duties to Seller or that would conflict with the Business as presently conducted or presently contemplated to be conducted. Except as set forth on **Schedule 4.18(d)**, all of Seller's current or past employees that have participated in the development of Seller-owned Intellectual Property, including software owned by Seller, have entered into valid, binding, legal and enforceable employee agreements with Seller assigning all right, title and interest in any Intellectual Property created within the scope of their employment to Seller. **Schedule 4.18(d)** lists all third-party consultants or current or past contractors that have participated in the development of Seller-owned Intellectual Property. Except as set forth on **Schedule 4.18(d)**, all such third parties have entered into valid, binding, legal and enforceable agreements with Seller assigning all right, title and interest in the Intellectual Property therein to Seller. Pursuant to such agreements or applicable law, Seller owns all of the right, title and interest of its employees and third party contractors and consultants to the Seller-owned Intellectual Property.

(e) To the Knowledge of Seller, none of the products or services currently or formerly developed manufactured, sold, distributed, provided, shipped or licensed by Seller, or which are currently under development, in each case related to the Business, has infringed or infringes upon, or otherwise unlawfully used or uses, the Intellectual Property of any third party. To the Knowledge of Seller, by conducting the Business as currently conducted or as proposed to be conducted, it has not infringed or infringes upon, or otherwise unlawfully used or uses, any Intellectual Property of a third party. Seller has not received any communication alleging that Seller has infringed, diluted, misappropriated or otherwise violated or, by conducting the Business as currently conducted or as proposed to be conducted, would infringe, dilute, misappropriate or otherwise violate, any Intellectual Property of a third party nor, to the Knowledge of Seller, is there any basis for any such claim. No action has been instituted or, to the Knowledge of Seller, threatened relating to any Intellectual Property formerly or currently used by Seller related to the Business and none of the Seller-owned Intellectual Property is subject to any outstanding order. To the Knowledge of Seller, no person has infringed, diluted, misappropriated or otherwise violated, or is infringing, diluting, misappropriated or otherwise violating any Seller-owned Intellectual Property.

(f) Except as set forth on **Schedule 4.18(f)**: (1) all trademark applications, copyright applications, and patent applications constituting Seller-owned Intellectual Property are in compliance with all legal requirements, (2) all issued trademark registrations, copyright registrations and patents constituting Seller-owned Intellectual Property are valid and enforceable, (3) Seller has maintained all of the Seller-owned Intellectual Property described in the foregoing (1) and (2) and no such Seller-owned Intellectual Property has been abandoned, has expired, or been cancelled, except where Seller has, in its reasonable business judgment,

decided to abandon or cancel such Seller-owned Intellectual Property in the ordinary course of its Business. Seller is not subject to any outstanding injunction, judgment, order, decree, ruling or charge relating to Seller-owned Intellectual Property, and to the Knowledge of Seller, no proceeding (including any cancellation, opposition, patent interference, reissue, re-examination), claim, demand or investigation is pending against Seller, and to the Knowledge of Seller, no proceeding is threatened, which challenges the legality, validity, enforceability, use or ownership of the Seller-owned Intellectual Property. Seller has no Knowledge of any basis for such claim. Seller-owned Intellectual Property is valid and enforceable. The Seller-owned Intellectual Property and the Licensed Intellectual Property constitutes all of the Intellectual Property used in or necessary for the operation of the Business as currently conducted or as currently contemplated by Seller to be conducted.

(g) **Schedule 4.18(g)** identifies (1) each item of Licensed Intellectual Property, excluding shrink wrap software with a perpetual royalty free license to Seller, and (2) all Seller-owned Intellectual Property that has been licensed or otherwise made available to any third party. Except as set forth on **Schedule 4.18(g)**, Seller has provided Buyer with correct and complete copies of all such licenses and agreements. All such licenses and agreements are valid, binding and currently in full force and effect. Seller is and to the Knowledge of Seller, all other parties are, in compliance with all material terms of all such licenses or agreements. The consummation of the transactions contemplated hereby will not constitute a default by Seller or give rise to a right of termination or cancellation by another party under any such licenses or agreements.

(h) Except as set forth on **Schedule 4.18(h)**, with respect to each such third-party license or agreement, (1) the underlying item is not subject to any outstanding injunction, judgment, order, decree, ruling or charge, (2) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or to the Knowledge of Seller, is threatened which challenges the legality, validity, enforceability, use or ownership of such third-party license or agreement, (3) Seller has not granted any sublicense or similar right with respect to such third-party license or agreement, and (4) with respect to Seller, the third-party license or agreement is legal, valid, binding, enforceable and in full force and effect and will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated by this Agreement, subject to any required consents and applicable laws of bankruptcy, insolvency, moratorium, and other applicable laws and equitable principles generally affecting creditor's rights.

(i) All software used by Seller is properly licensed and is not a "bootleg" version or copy and, to the Knowledge of Seller, the internal computer hardware systems, embedded systems and software used to operate the Business: (1) are in satisfactory working order and are scalable to meet current and reasonably anticipated capacity, (2) have appropriate security, backups, disaster recovery arrangements and hardware and software support and maintenance to minimize the risk of error, breakdown, failure or security breach occurring and is intended that if such event does occur, it does not cause material disruption or damage to Seller's operation and/or the Business, (3) are configured and maintained to minimize the effects of viruses and block trojan horses and other malicious code, and (4) have not suffered any material error, breakdown, failure or security breach in the last twelve (12) months.

(j) Seller has at all times complied with all of its own rules, policies and procedures, relating to rights of publicity, privacy, data protection, and the collection, use, storage and disposal of personal information collected, used, or held for use by Seller in the conduct of the Business. No proceeding has been asserted or, to the Knowledge of Seller, threatened alleging a violation of any person's rights of publicity or privacy or personal information or data rights and the consummation of the transactions contemplated hereby will not breach or otherwise cause any violation of any applicable laws or rule, policy, or procedure related to rights of publicity, privacy, data protection, information security, or the collection, use, storage or disposal of personal information collected, used, or held for use by Seller in the conduct of the Business. Seller takes reasonable measures to ensure that such information is protected against unauthorized access, use, modification, or other misuse.

(k) "Intellectual Property" means any and all (1) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions, utility models, certificates of inventions, design patents, and reexaminations thereof; (2) trademarks, service marks, trade dress, logos, trade names, assumed names, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; (3) copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith; (4) mask works and all applications, registrations and renewals in connection therewith; (5) trade secrets, know-how and business information (including ideas, research and development, technology, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals); (6) software; (7) other intellectual property and proprietary rights of any kind, nature or description, as well as the right to sue for past, present and future infringement and to retain all remedies including damages resulting from such suits, together with all forms of legal rights and protection that may be obtained for any of the foregoing in (1) through (7) anywhere in the world, including web sites, web site domain names and other e-commerce assets and resources of any kind or nature; and (8) copies of tangible embodiments thereof (in whatever form or medium).

(l) "Licensed Intellectual Property" means any and all Intellectual Property that is used by the Business and owned by a third party, and used by Seller pursuant to a license or other agreement.

(m) "Seller-owned Intellectual Property" means any and all Intellectual Property that is used by the Business and is owned or purported to be owned by Seller and transferred as Purchased Assets.

4.19. **Operating Contracts.** Schedule 4.19 sets forth all of the current contracts and purchase orders relating to the Business to which Seller is a signatory or operates under, including all non-competition, non-solicitation and other agreements containing similar restrictive covenants with current or former employees and independent contractors of Seller or



Shareholder, if such current or former employees and independent contractors of Shareholder materially participated in the day to day operations of the Business. All contracts and purchase orders were made in the ordinary course of Business and are valid, binding and currently in full force and effect, or if expired by the contract terms, are still used in the operation of Seller. Seller is not in default under any contract or purchase order and no event has occurred which through the passage of time or the giving of notice, or both, would constitute a default by Seller or give rise to a right to terminate or cancel to another party under the contract, or cause the acceleration of any liability of Seller, result in the creation of any encumbrance on any Purchased Asset. None of the contracts have been terminated, cancelled, amended or modified except as disclosed in Schedule 4.19. Except as set forth on Schedule 4.19, the consummation of the transactions contemplated hereby will not require the consent or approval of any person under the contract or purchase order.

4.20. ***Real Estate.*** Seller does not own or lease any real property used in operation of the Business.

4.21. ***Books and Records.*** All of Seller's financial records relating to the Business have been made available to Buyer and its representatives. Such records are current, complete, true and correct in all material respects.

4.22. ***Employees and Employee Related Commitments.***

(a) **Schedule 4.22(a)** contains a true and correct list of the names, positions, annual salary rates, hourly wage rates, severance benefits, accrued vacation and sick leave and other paid time off, as of the Closing Date, of all present employees and independent contractors of Seller with respect to the Business (including those on furlough, leave, disability (short or long-term) or layoff of any kind, which status shall be noted therein). Except as set forth on **Schedule 4.22(a)**, none of the employees has informed Seller that he/she intends to terminate employment with Seller. **Schedule 4.22(a)** contains copies of any employee/non-competition/non-disclosure agreements, other than any benefit plans, with respect to the conditions of employment of all of Seller's employees and independent contractors that are employed in the operation of the Business. All employees are employed on an "at will" basis except as set forth on **Schedule 4.22(a)**.

(b) The consummation of the transactions described in this Agreement, in and of themselves, will not entitle any current or former employee of Seller to severance pay, unemployment compensation or any other payment, or accelerate the time of payment or vesting, or increase the amount of compensation due to any such employee or former employee.

(c) To the Knowledge of Seller, in the course and scope of employment with Seller in the Business, no employee of Seller has been exposed to any hazardous materials in such a manner as to be harmed thereby (whether such harm is now known to exist or will be discovered in the future).

4.23. ***Intentionally Omitted.***

4.24. **Inventories.** Except as set forth on Schedule 4.24, the Seller does not own Inventory.

4.25. **Insurance.** Seller has maintained insurance which covers Seller's tangible and intangible, real and personal property and assets, whether owned or leased, against loss or damage by fire or other casualty, including each and all of the Purchased Assets. All such insurance is in full force on the date of this Agreement and is carried with insurers licensed in the states affected by such policies. Seller has promptly and adequately notified Sellers insurance carriers of any and all claims known to Seller with respect to the operations, products or services of Seller for which Seller is insured. Seller has not made any claim under any insurance policy since January 1, 2012.

4.26. **Intentionally Omitted.**

4.27. **Customers and Suppliers.** Schedule 4.27 sets forth a full and complete listing of the top twenty (20) (in terms of dollars of expense) suppliers and other vendors to Seller. Schedule 4.27 sets forth a full and complete listing of all active and non-active customers of Seller. No vendor, supplier, dealer, representative or consultant of Seller that is material to Seller's operations has notified Seller after December 31, 2014, that it intends to terminate, cancel, limit or modify its business relationship with Seller in any material respect. No material customer or a group of customers of Seller has notified Seller that at any time on or after December 31, 2014, the customer intends to terminate, cancel, limit or modify the customer's business relationship with Seller.

4.28. **Intentionally Omitted.**

4.29. **Brokers.** Seller has not employed or engaged any broker, finder, agent, banker or third party, nor has it otherwise dealt with anyone purporting to act in the capacity of a finder or broker in connection with the transactions contemplated hereby. No commissions, finder's fees or like charges have been or will be incurred by Seller that are chargeable to the Business or against the Purchased Assets in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. Any such commissions, finders' fees or like charges shall be directly chargeable to Seller as contemplated by the terms of this Agreement.

4.30. **Delivery of Documents; Accurate Disclosure.** No representation or warranty by Seller in this Agreement, nor any written document or other information furnished or to be furnished to Buyer pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained therein not materially misleading.

## 5. REPRESENTATIONS AND WARRANTIES OF BUYER.

In order to induce Seller to sell the Purchased Assets, Buyer makes to Seller the following representations which shall be considered made as of the date hereof and as of the Closing Date:

5.1. **Organization, Good Standing and Company Power.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power to, and has taken all actions necessary to, enter into and perform this Agreement.

5.2. **No Violation.** The execution, delivery and performance by Buyer of this Agreement, including but not limited to, the execution of the Note by Buyer, the execution of the Security Agreement by Buyer and the filing of the Financing Statements will not violate any provision of law, rule or regulation, any order of any court or other agency of government, and will not violate any provision of any other indenture, agreement or other instrument to which it is a party or by which it is bound.

5.3. **Power and Authority.** Buyer has full power and authority to execute and deliver this Agreement and such other agreements and instruments as are to be executed and delivered by Buyer pursuant hereto, including the Note and Security Agreement and to consummate the transactions contemplated hereby and thereby.

5.4. **Brokers.** Buyer has not employed or engaged any broker, finder, agent, banker or third party, nor has it otherwise dealt with anyone purporting to act in the capacity of a finder or broker in connection with the transactions contemplated hereby. No commissions, finder's fees or like charges have been or will be incurred by Buyer that are chargeable to the Seller or Shareholder in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. Any such commissions, finders' fees or like charges shall be directly chargeable to Buyer as contemplated by the terms of this Agreement.

5.5. **Litigation.** Buyer is not a party to, or to the Knowledge of Buyer threatened with, any litigation or judicial, administration or arbitration proceeding.

5.6. **Corporate Acts.** All proceedings required to be taken by or on the part of Buyer to authorize it to execute, deliver and perform this Agreement and such other agreements and instruments as are to be executed and delivered by Buyer pursuant hereto have been duly and properly taken.

5.7. **No Approval.** Except as set forth on Schedule 5.7 attached hereto, no approval, authorization, consent or other order or action of or filing with any court, administrative agency, other governmental authority, or other third party is required for the execution and delivery by Buyer of this Agreement or such other agreements or instruments, or consummation of the transactions contemplated hereby or thereby.

5.8. **Employment of Seller's Employees.** Prior to the Closing, Buyer has offered employment, contingent upon the Closing and effective upon the Closing Date, to each of Seller's employees listed on Schedule 4.22(a) ("Continuing Employees"). Such offers of employment provided for positions comparable to those occupied by each Continuing Employee immediately prior to the Closing Date and provided for compensation equal to that paid by Seller to such Continuing Employee as of the Closing Date and employee benefits comparable to what Buyer provides to its current similarly situated employees.

6. **SURVIVAL; INDEMNIFICATION; ADJUDICATION OF DISPUTES.**

6.1. ***Survival.*** All of the representations and warranties of the Parties hereto contained in this Agreement and the Schedules attached hereto, and any other certificate or document delivered pursuant to this Agreement (collectively the "Transaction Documents") shall survive the execution and delivery of this Agreement and the Closing until March 31, 2017.

6.2. ***Indemnification by Seller.***

(a) Subject to the provisions of this Section 6, from and after the Closing, Seller shall indemnify Buyer and hold Buyer harmless from and against any and all loss, cost, liability and expense, including reasonable attorney's fees and costs of suit ("Losses"), which Buyer may incur as a result of:

(i) any claim, demand or action against Buyer arising out of Seller's conduct of the Business prior to the Closing;

(ii) any breach of or inaccuracy in any representation or warranty made by Seller in the Transaction Documents;

(iii) any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation of Seller set forth in the Transaction Documents; and

(iv) failure of Seller to pay, discharge or perform any of the Excluded Liabilities.

(b) ***Buyer Threshold Amount.*** No amounts of indemnity shall be payable in the case of a claim or claims by Buyer under Section 6.2 unless Buyer has suffered, incurred, sustained or become subject to Losses in excess of \$10,000 in the aggregate (the "Buyer Threshold Amount"), in which event Buyer shall be entitled to claim indemnity for the full amount of Losses to the extent above such Buyer Threshold Amount.

(c) ***Buyer Indemnification Cap.*** No indemnification shall be made by Seller and Shareholder under Section 6.2 to the extent that Losses incurred by Buyer, in the aggregate, exceed the Purchase Price.

(d) ***Effect of Insurance, Tax and Other Recoveries.*** The amount of any Losses for which indemnification is provided under Section 6.2 shall be reduced by (i) any insurance proceeds received by Buyer with respect thereto, and (ii) any tax benefits realized by Buyer as a result of the event for which Buyer is being indemnified; provided that if any such amounts are recovered after the indemnification payment is made, Buyer shall promptly pay the appropriate amount to Seller and Shareholder.

(e) **No Double Recovery.** Notwithstanding the fact that Buyer may have the right to assert claims for indemnification under or in respect of more than one provision of this Agreement in respect to any fact, event, condition or circumstance, Buyer will not be entitled to recover the amount of any Losses suffered by Buyer more than once under both this Agreement and the related agreements and documents for the transactions discussed and contemplated herein in respect of such fact, event, condition or circumstance.

(f) **Right of Offset.** Buyer shall have the right to offset and/or recoupment against any amounts owed by Buyer to Seller or its successors or assigns, including any amount owed under the Note, in the event any claim for Losses is finally adjudicated by a court of competent jurisdiction as owed to Buyer or is agreed in writing by Seller as owed to Buyer. Notwithstanding the foregoing, if, within thirty (30) days prior to the last payment due under the Promissory Note, there is any outstanding claim asserted by Buyer and not finally adjudicated, the amount of the claim so asserted shall be paid into escrow to be held by Buyer's counsel until such claim is finally adjudicated. Upon final adjudication, the escrow shall be released pursuant to the terms of the final adjudication.

### 6.3. **Indemnification By Buyer.**

(a) Buyer shall indemnify Seller and hold Seller and Shareholder harmless from all Losses which Seller or Shareholder may incur as a result of:

(i) any claim, demand or action against Seller or Shareholder arising out of Buyer's conduct of the Business after the Closing;

(ii) any breach of or inaccuracy in any representation or warranty made by Buyer in the Transaction Documents;

(iii) any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation of Buyer set forth in the Transaction Documents; and

(iv) failure of Buyer to perform, satisfy, pay or discharge the Assumed Liabilities.

(b) **Seller/Shareholder Threshold Amount.** No amounts of indemnity shall be payable in the case of a claim or claims by Seller or Shareholder under Section 6.3 unless Seller and Shareholder have suffered, incurred, sustained or become subject to Losses in excess of \$10,000 in the aggregate (the "Seller/Shareholder Threshold Amount"), in which event Seller or Shareholder as the case may be shall be entitled to claim indemnity for the full amount of Losses to the extent above such Seller/Shareholder Threshold Amount.

(c) **Seller/Shareholder Indemnification Cap.** No indemnification shall be made by Buyer under Section 6.3 to the extent that Losses incurred by Seller and Shareholder, in the aggregate, exceed the Purchase Price.

(d) ***Effect of Insurance, Tax and Other Recoveries.*** The amount of any Losses for which indemnification is provided under Section 6.3 shall be reduced by (i) any insurance proceeds received by Seller or Shareholder with respect thereto, and (ii) any tax benefits realized by Seller or Shareholder as a result of the event for which Seller or Shareholder is being indemnified; provided if any such amounts are recovered after the indemnification payment is made, Seller or Shareholder, as the case may be, shall promptly pay the appropriate amount to Buyer.

(e) ***No Double Recovery.*** Notwithstanding the fact that Seller or Shareholder may have the right to assert claims for indemnification under or in respect of more than one provision of this Agreement in respect to any fact, event, condition or circumstance, Seller or Shareholder, as the case may be, will not be entitled to recover the amount of any Losses suffered by such Seller or Shareholder, as the case may be, more than once under both this Agreement and the related agreements and documents for the transactions discussed and contemplated herein in respect of such fact, event, condition or circumstance.

6.4. ***Claims for Indemnification.*** Whenever any claim of indemnification shall arise in favor of Buyer under Section 6.3 or in favor of Seller or Shareholder under Section 6.2, the party entitled to indemnification (the "Indemnified Party") shall notify the party that is required to indemnify such Indemnified Party (the "Indemnifying Party") in writing by personal delivery, overnight courier or certified mail, return receipt requested, within thirty (30) days after the Indemnified Party has actual knowledge of the facts constituting the basis for such a claim. Such notice shall specify all facts known to the Indemnified Party giving rise to such indemnification right and the amount or an estimate of the amount of the liability arising therefrom. Failure to give such notice shall not excuse the Indemnifying Party except to the extent it is prejudiced by the failure. The Indemnifying Party shall proceed, at its own expense, to resist, dispose of or compromise any such alleged claim, suit, action or proceeding. In any event, the Indemnified Party, the Indemnifying Party and the Indemnifying Party's counsel shall cooperate in the compromise of, or defense against, any such asserted liability. Both the Indemnified Party and the Indemnifying Party may participate, and the Indemnified Party may at its own expense employ separate legal counsel, in the defense of such asserted liability. Neither Indemnifying Party nor the Indemnified Party may settle or compromise any claim over the objection of the other, provided, however, that such consent shall not unreasonably be withheld and if the Indemnified Party withholds its consent, the Indemnifying Party shall be relieved of its indemnification obligation. If the Indemnifying Party chooses to defend any claim, the Indemnified Party shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense.

6.5. ***Third Party Claims.*** If the facts giving rise to any indemnification right hereunder shall involve any actual or threatened claim or demand by any third party against an Indemnified Party or any possible claim by the Indemnified Party against any third party, such claim by or against a third party shall be referred to as a "Third Party Claim". An Indemnified Party that intends to seek indemnification from the Indemnifying Party in respect of any Third Party Claim shall notify the Indemnifying Party in writing by personal delivery, overnight courier or certified mail, return receipt requested, with reasonable promptness after the Indemnified Party receives notice of such Third Party Claim. The Indemnifying Party will not be

obligated to indemnify the Indemnified Party with respect to such Third Party Claim if and to the extent that the Indemnifying Party's ability to defend has been irreparably prejudiced by such failure of the Indemnified Party to provide reasonable notice. Such notice shall specify all facts known to the Indemnified Party giving rise to such Third Party Claim and the amount or an estimate of the amount of the liability arising therefrom. If the Indemnifying Party shall give the Indemnified Party an agreement in writing, in form and substance reasonably satisfactory to counsel to the Indemnified Party, agreeing to indemnify and save Indemnified Party harmless from all costs and liability arising from a Third Party Claim, the Indemnifying Party may, at its or their own expense, undertake full responsibility for the defense or prosecution of such Third Party Claim and may contest or settle it on such terms as they may choose, except that no settlement of any action involving claims other than for money damages may be made without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld).

## **7. POST-CLOSING MATTERS**

7.1. *Intentionally Omitted.*

7.2. *Intentionally Omitted.*

### **7.3. *Non-Competition Agreement; Restrictive Covenant; Non-Solicitation; Confidential Information***

(a) As a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated hereby, Seller and Shareholder agree that for a period of five (5) years after the Closing (the "Non-Competition Period") they will not engage (as an individual or as a shareholder, trustee, partner, financier, agent, employee or representative of any person, firm, corporation or association), or have any interest, direct or indirect, in any business in competition with the Business; provided that this Section 7.3 shall not prevent Seller from acquiring and holding not to exceed five percent (5%) of the outstanding shares of any corporation engaged in such a competitive business if such shares are available to the general public on a national securities exchange or trade on NASDAQ.

(b) During the period of five (5) years from and after the Closing Date, Seller and Shareholder, each covenants and agrees that it will not, whether for its or its own account or for the account of any other person, directly or indirectly interfere with Buyer's relationship with, or endeavor to divert or entice away from Buyer, any person who or which at any time during the term of such person's affiliation with Buyer is an employee, vendor, supplier or customer of Seller in its WyckWyre division, for purposes of entering into any business relationship that is competitive with the Business.

(c) Seller and Shareholder understand and agree that the Business of Seller is based upon specialized work and that each has, along with Seller's Shareholder, directors, officers, agents, received, had access to and/or contributed to Confidential Information. Except as may be required by applicable law (provided that Seller and/or Shareholder has provided Buyer notice (unless prohibited from doing so by law or governmental order) so that Buyer may seek a protective order or other appropriate remedy prior to such disclosure) or necessary or

desirable (i) for defense of Losses or conducting or participating in a proceeding in accordance with Sections 6.2 and 6.3 hereof, (ii) in enforcing Seller's or Shareholder's rights under this Agreement or any Transaction Documents or (iii) for the purpose of filing any report with any governmental body, Seller and Shareholder agree that at all times from and after the Closing Date, Seller and Shareholder shall keep secret all such Confidential Information and that it and it will not directly or indirectly use or disclose the same to any person without first obtaining the written consent of Buyer, which consent may be withheld or given in Buyer's sole discretion. At any time Buyer may so request, Seller, Shareholder and Seller's officers, directors, and agents shall turn over to Buyer all Confidential Information compiled by or delivered to such persons, including copies thereof, in their possession, it being agreed that the same and all information contained therein are at all times the exclusive property of Buyer. "Confidential Information" means all information related to the Business provided by one party to the other party in connection with transactions contemplated herein. Confidential Information shall include, but not be limited to, all forms and types of financial, operational, business, scientific, technical, strategic, economic, or engineering information, including products, equipment, special tools, patterns, plans, layouts, compilations, concepts, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs and codes, whether such information is tangible or intangible, compiled or memorialized physically, electronically, graphically, photographically or in writing and regardless of whether or how such information is stored.

(d) Seller and Shareholder agree that the remedy at law for any breach by either or both of them of the foregoing will be inadequate and that Buyer shall, in addition to any other remedies provided by law or equity, be entitled to seek a temporary and permanent injunctive relief without the necessity of proving actual damage to Buyer. Seller and Shareholder acknowledge and agree that the time, geographical area and scope of activity restrained by the provisions of this Section 7.3 are reasonable, do not impose a greater restraint than is necessary to protect goodwill of Buyer's business, and Seller and Shareholder have received full and adequate consideration therefore. If any court determines that any of such covenants, or any part thereof, is invalid or unenforceable, the remainder of such covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court determines that any of the foregoing covenants, or any part thereof, is unenforceable because of the time, geographical area or scope of the activity restrained by such provisions, such court shall have the power to reduce the time, geographical area or scope of the activity restrained by such provision as the case may be, and, in its reduced form, such provision shall then be enforceable.

(e) Notwithstanding the foregoing, Buyer agrees and acknowledges that Seller and Shareholder conduct business with such persons, vendors, customers, and suppliers that are persons, vendors, customers and suppliers of the Business. Seller and Shareholder shall not be in breach of this Section 7.3 in continuing to conduct business with such persons, vendors, customers and suppliers so long as such business is not competitive with the Business.

(f) The restrictions in this Section 7.3 shall not be applicable or enforceable if at any time Buyer is in violation of the provisions of the Note or if Seller exercises its rights under the Security Agreement, including foreclosing on the Purchased Assets.



7.4. **Post Closing Covenants and Agreements of Seller and Buyer.** From and after the Closing Date, Seller and/or Buyer, as applicable, agree as follows:

(a) **Seller's Covenant Regarding Obligations.** Seller shall, in a timely fashion, pay all creditors, discharge any and all obligations to any taxing authority, and satisfy all obligations and liabilities of Seller not specifically assumed by Buyer hereunder relating to the Business. The covenant contained in this Section 7.4(a) shall survive the Closing hereof.

(b) **Seller's Covenant Regarding Corporate Name.** Immediately following the Closing, Seller shall withdraw the fictitious name "WyckWyre" in any state in which such fictitious name is registered and provide Buyer with "filed" copies of such withdrawal effectuating such change.

(c) **Intentionally Omitted.**

(d) **Employment of Seller's Employees.** As of the Closing Date, all Continuing Employees will be under the exclusive supervision of Buyer and subject to Buyer's policies and procedures. Unless a Continuing Employee has signed an employment agreement with Buyer, he or she will be deemed an employee "at will" and nothing expressed or implied herein will obligate Buyer to provide continued employment to any such Continuing Employee for any specified period of time following the Closing Date. Seller shall terminate the employees listed on **Schedule 4.22(a)** as of the Closing Date and shall assume any liabilities arising from such termination, including any and all accrued benefits owed by such employees by Seller. At Closing, all Continuing Employees will have executed non-competition/non-disclosure agreements, as applicable, with Buyer. In addition, Seller shall assign to Buyer any and all employment/non-competition/non-disclosure agreements between Seller and its employees for any non-Continuing Employees of Seller identified on **Schedule 4.22(a)** who will not retain employment with Seller in order to allow Buyer to enforce any non-competition/non-disclosure provisions contained in such agreements.

## 8. **MISCELLANEOUS**

8.1. **Notices.** Unless otherwise specifically provided herein, all notices, demands and other communications provided for hereunder shall be in writing and shall be given by personal delivery, by nationally recognized overnight courier (prepaid), or by certified or registered first class mail, postage prepaid, return receipt requested, sent to each party, at its/his address as set forth below or at such other address or in such other manner as may be designated by such party in written notice to each of the other parties. All such notices, demands and communications shall be effective when personally delivered, one (1) business day after delivery to the overnight courier, or upon receipt, or if delivery is refused, upon refusal, after dispatch by mail to the party to whom the same is so given or made:

If to Seller, to:

Restaurant Results, Inc.

101 Broome Corporate Parkway  
Conklin, NY 13748  
Attn: Theresa Deane

If to Shareholder, to:

Maines Paper & Food Service, Inc.  
101 Broome Corporate Parkway  
Conklin, New York 13748  
Attn: Theresa Deane

With a copy to:

Hinman Howard, & Kattell, LLP  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, New York, 13901  
Attn: James W. Orband, Esq.

If to Buyer, to:

Jordan Gilmore, Inc. d/b/a Hyrell, Inc.  
1610 Adams Avenue  
Dunmore, PA 18509

With a copy to:

Myers, Brier & Kelly, LLP  
Kristen Mackrell Clark, Esq.  
425 Spruce Street - Suite 200  
Scranton, PA 18503  
(P) 570-342-6100  
(F) 570-342-6147  
[kclark@mbklaw.com](mailto:kclark@mbklaw.com)

or to such other address or to such other person as any party shall designate to the other for such purposes in the manner hereinabove set forth.

8.2. *Allocation of Purchase Price.* The Purchase Price shall be allocated among the various classes of Purchased Assets in accordance with **Schedule 8.2**. The Parties agree that any tax returns or other tax information they may file or cause to be filed with any governmental agency shall be prepared and filed consistently with such agreed upon allocation. In this regard, the Parties agree that, to the extent required, they will each properly prepare and timely file Form 8594 in accordance with Section 1060 of the Code.

8.3. ***Pennsylvania Law to Govern; Forum.*** This Agreement is being delivered in Pennsylvania and shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

8.4. ***Contents of Agreement; Parties in Interest.*** This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements and understandings of the parties relating to the subject matter hereof. This Agreement may be modified or terminated only in a writing signed by all of the Parties. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns. This Agreement may not be assigned by Seller, Shareholder or Buyer without the written consent of all Parties.

8.5. ***Expenses.*** Seller, Shareholder and Buyer shall each be responsible for their respective legal and professional fees and any other expenses or fees incurred in connection with the transactions contemplated by the Agreement.

8.6. ***Headings.*** The subject headings of the sections and subsections of this Agreement are included for purposes of convenience and shall not affect the construction or interpretation of any of its provisions.

8.7. ***Counterparts; Facsimile; Execution.*** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed and delivered by the Parties by facsimile, to be followed with originals within five (5) days of the date thereof.

8.8. ***Interpretation.*** In all references herein to any parties, persons, entities companies, or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Agreement may require.

8.9. ***Further Assurances.*** The Parties agree that, at any time and from time to time, on and after the Closing Date, upon the reasonable request of the other Party, they will do or cause to be done all such further acts and things and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered any and all papers, documents, instruments, agreements, assignments, transfers, assurances and conveyances as may be necessary or desirable to carry out and give effect to the provisions and intent of this Agreement.

8.10. ***Severability.*** If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

8.11. ***Construction.*** The Parties and their respective counsel have reviewed this Agreement and have had the opportunity to revise this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

8.12. **Waiver.** The terms, conditions, warranties, representations and indemnities contained in this Agreement, including the documents, instruments and agreements executed and/or delivered by the Parties pursuant hereto, may be waived only by a written instrument executed by the Party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof. No failure on the part of a Party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

8.13. **David Maines and William Maines.** As part of this Agreement, David Maines, William Maines and Buyer will execute the Amendment of Stock Purchase Agreement attached hereto as Exhibit A wherein the Parties thereto will acknowledge and agree that David Maines and William Maines shall have no further obligation to purchase Buyer's stock pursuant to the terms of Sections 1.3(c) and 1.3(d) of that certain Stock Purchase Agreement dated July 30, 2010 by and between Buyer, David Maines and William Maines.

8.14. **Knowledge Defined.** The phrase "to the Knowledge of Seller," "to the Knowledge of Shareholder", "Seller's Knowledge", "Shareholder's Knowledge" or similar phrases shall mean the knowledge of the persons listed on **Schedule 8.14** attached hereto. In all events, "Knowledge" means, with respect to an individual identified on Schedule 8.14, that (a) the individual is actually aware of a particular fact or other matter, (b) a prudent individual should be expected to discover or otherwise become aware of the particular fact or other matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement or (c) the individual has received written notice as of the Closing Date. Knowledge by Buyer of a particular fact or other matter shall mean Knowledge of Buyer's President, Chief Executive Officer and any member of the Buyer's Board of Directors.

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

ATTEST:

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

SELLER:  
RESTAURANT RESULTS, INC.

By: *Name*  
NAME, ~~President~~ *SVP + CFO*

SHAREHOLDER:

*Name*  
NAME, ~~President~~ *SVP + CFO*

JORDAN GILMORE, INC.

By: \_\_\_\_\_  
Brian Clark, CEO

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

ATTEST:

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

SELLER:  
RESTAURANT RESULTS, INC.

By: \_\_\_\_\_  
NAME, President

SHAREHOLDER:

\_\_\_\_\_  
NAME, President

JORDAN GILMORE, INC.

By:   
Brian Clark, CEO