

01-10-2002



RE 101939798 .ET

TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New 1.4.02

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger Effective Date
Month Day Year
4 4 01

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

01/10/2002 DBYRNE 00000037 76139401
01 FC:481 40.00 DP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

(617) 248-2127

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="76139401"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Heidi A. Schiller

Name of Person Signing

Heidi A. Schiller
Signature

11/1/01
Date Signed

GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT

This General Assignment and Assumption Agreement (this "Agreement") is entered into effective as of April 4, 2001 by and among PSI Holding Group, Inc., a Massachusetts corporation ("Parent"), Akibia, Inc., a Massachusetts corporation ("Akibia"), and TidalWire Inc., a Delaware corporation ("TidalWire"). Certain capitalized terms used herein are defined in Article IV hereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Master Separation and Distribution Agreement dated as of April 4, 2001 among Parent, Akibia and TidalWire (the "Separation Agreement").

RECITALS

WHEREAS, the Boards of Directors of Parent and Akibia have determined that it would be appropriate and desirable for Akibia to contribute and transfer to TidalWire, and for TidalWire to receive and assume, substantially all of the assets and liabilities currently associated with the TidalWire Business;

WHEREAS, the parties intend that this Agreement and the Separation Agreement shall set forth the arrangements between them regarding the contribution and assumption of the assets and liabilities associated with the TidalWire Business.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I CONTRIBUTION AND ASSUMPTION

Section 1.1. Contribution of Assets and Assumption of Liabilities.

(a) Transfer of Assets. On the Separation Date and upon the terms and subject to the conditions contained in this Agreement and the Separation Agreement, Akibia hereby sells, assigns, transfers, conveys and delivers to TidalWire all of its right title and interest in and to, and TidalWire hereby purchases, acquires and accepts from Akibia, free and clear of all liens, encumbrances and restrictions of every kind nature and description (other than the liens and encumbrances set forth on Schedule 1.1 hereof), all of the TidalWire Assets, other than the Excluded Assets.

(b) Assumption of Liabilities.

(i) On the Separation Date and upon the terms and subject to the conditions contained in this Agreement and the Separation Agreement, TidalWire hereby assumes and agrees faithfully to perform and fulfill all of the Liabilities and obligations of Akibia in respect of the TidalWire Business set forth on Schedules 1.1 and 1.3 (collectively, the "TidalWire Liabilities"), including the Citizens Lien but excluding the Excluded Liabilities, in accordance with their respective terms, regardless of when or where such TidalWire Liabilities arose or arise, or whether the facts on which they are based occurred prior to, on or after

the date hereof. Except as specifically set forth in this Agreement, TidalWire shall not assume nor be deemed to assume and the TidalWire Liabilities shall not include any other Liabilities or obligations of Akibia or Parent of any kind or nature, whether fixed, contingent, known or unknown.

(ii) Effective as of the Separation Date, Akibia and Parent shall cancel, or cause to be cancelled, any intercompany receivables, payables and loans (other than the Note) that may exist between or among Parent and/or Akibia, on the one hand, and any entity (including any unincorporated branch or division) that, effective as of the Separation Date, would be included in TidalWire and the TidalWire Business, on the other hand. As a result of such cancellation, TidalWire shall not assume, pursuant to the transactions contemplated by this Agreement or otherwise, any liability for any intercompany account of the type described in the immediately preceding sentence.

(c) Misallocated Assets. In the event that at any time or from time to time, any party hereto shall receive or otherwise possess any Asset that is allocated to any other Person pursuant to this Agreement or any Ancillary Agreement, such party shall promptly transfer, or cause to be transferred, such Asset to the Person so entitled thereto. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for any such other Person.

Section 1.2. TidalWire Assets.

(a) Included Assets. For purposes of this Agreement, the term "TidalWire Assets" shall mean, except for the Excluded Assets set forth in Section 1.2(b),

(b) all Assets that are (x) owned by Akibia or with respect to which Akibia has the right to transfer, and (y) used primarily in, relate primarily to or arise directly from the TidalWire Business. Without limiting the generality of the foregoing, the TidalWire Assets will include (without duplication) the following:

- (i) all Assets set forth on Schedule 1.2;
- (ii) all TidalWire Contracts;
- (iii) to the extent permitted by law, all rights of TidalWire and the TidalWire Covered Parties under any insurance policies maintained by Akibia for the benefit of TidalWire and the TidalWire Covered Parties during the Insurance Transition Period;
- (iv) all right, title and interest in and to all monetary and other awards and judgments arising out of the litigation described on Schedule 1.2;
- (v) all other Assets that are expressly contemplated by this Agreement, the Separation Agreement or any other Ancillary Agreement (or any other Schedule hereto or thereto) as constituting Assets to be transferred to TidalWire.

(c) Excluded Assets. For the purposes of this Agreement, "Excluded Assets" shall mean:

- (i) the Assets listed or described on Schedule 1.2(c)(i);
- (ii) the Retained Receivables;
- (iii) any Assets that are expressly contemplated by the Separation Agreement, this Agreement or any other Ancillary Agreement (or the Schedules hereto or thereto) as constituting Assets to be retained by Akibia or any other member of the Akibia Group.

Section 1.3. TidalWire Liabilities.

(a) Included Liabilities. For the purposes of this Agreement, "TidalWire Liabilities" shall be deemed to include (without duplication) the following Liabilities, except to the extent otherwise provided for in any other Ancillary Agreement or other express agreement of the parties:

(i) all Liabilities (other than Liabilities for Taxes) primarily relating to, arising out of or resulting from:

(A) the operation of the TidalWire Business, as conducted at any time on or after the Separation Date;

(B) the operation of any business conducted by TidalWire at any time after the Separation Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority)); and

(C) any TidalWire Assets; and

(ii) all Liabilities that are expressly contemplated by this Agreement, the Separation Agreement, the Loan and Security Documents or any other Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by TidalWire including but not limited to those set forth on Schedule 1.3.

Notwithstanding the foregoing, the TidalWire Liabilities shall not include the Excluded Liabilities referred to in Section 1.3(b) below.

(b) Excluded Liabilities. For the purposes of this Agreement, "Excluded Liabilities" shall mean:

- (i) all Liabilities listed or described in Schedule 1.3(b)(i);
- (ii) the Retained Payables;

- (iii) all Insured TidalWire Liabilities;
- (iv) Liabilities for Taxes; and
- (v) all Liabilities that are expressly contemplated by this Agreement, the Separation Agreement or any other Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities which are (x) to be retained or assumed by Akibia or any other member of the Akibia Group, and (y) not TidalWire Liabilities, and all agreements and obligations of any member of the Akibia Group under the Separation Agreement, this Agreement or any other Ancillary Agreement.

Section 1.4. Methods of Transfer and Assumption.

(a) Terms of Other Ancillary Agreements Govern. The parties shall enter into the other Ancillary Agreements, on or about the date of this Agreement. To the extent that the transfer of any TidalWire Asset or the assumption of any TidalWire Liability is expressly provided for by the terms of any other Ancillary Agreement, the terms of such other Ancillary Agreement shall effect, and determine the manner of, the transfer or assumption. It is the intent of the parties that pursuant to Sections 1.1, 1.2 and 1.3, the transfer and assumption of all other TidalWire Assets and TidalWire Liabilities shall be made effective as of the Separation Date.

(b) Mistaken Assignments and Assumptions. In addition to those transfers and assumptions accurately identified and designated by the parties to take place but which the parties are not able to effect prior to the Separation Date, there may exist (i) Assets that the parties discover were, contrary to the agreements between the parties, by mistake or omission, transferred to TidalWire or (ii) Liabilities that the parties discover were, contrary to the agreements between the parties, by mistake or omission, assumed by TidalWire. The parties shall cooperate in good faith to effect the transfer or re-transfer of such Assets, and/or the assumption or re-assumption of such Liabilities, to or by the appropriate party and shall not use the determination that remedial actions need to be taken to alter the original intent of the parties hereto with respect to the Assets to be transferred to or Liabilities to be assumed by TidalWire. Each party shall reimburse the other or make other financial adjustments (e.g., without limitation, cash reserves) or other adjustments to remedy any mistakes or omissions relating to any of the Assets transferred hereby or any of the Liabilities assumed hereby.

(c) Documents Relating to Other Transfers of Assets and Assumption of Liabilities. In furtherance of the assignment, transfer and conveyance of TidalWire Assets and the assumption of TidalWire Liabilities set forth in Sections 1.4(a) and (b) and certain other Ancillary Agreements, simultaneously with the execution and delivery hereof or as promptly as practicable thereafter, (i) Akibia shall execute and deliver such bills of sale, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of Akibia's right, title and interest in and to the TidalWire Assets to TidalWire and (ii) TidalWire shall execute and

enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 3.9. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the Schedules or Exhibits attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 3.10. Amendment. No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the parties to such agreement.

Section 3.11. Authority. Each of the parties hereto represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other action, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

Section 3.12. Interpretation. The headings contained in this Agreement, in any Exhibit or Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule or Exhibit but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an Article or a Section, Exhibit or Schedule, such reference shall be to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated.

Section 3.13. Conflicting Agreements. In the event of conflict between this Agreement and any other Ancillary Agreement or other agreement executed in connection herewith, the provisions of such other agreement shall prevail (other than (i) as otherwise provided herein and (ii) the Separation Agreement).

ARTICLE IV DEFINITIONS

"Asset" or "Assets" means assets, properties and rights (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following:

- (i) all accounting and other books, records and files whether in paper, computer tape or disc, magnetic tape or any other form;

(ii) all apparatus, computers and other electronic data processing equipment and other tangible personal property, equipment and office equipment, but excluding fixtures and furniture;

(iii) all inventories of materials, parts, raw materials, supplies, work-in-process and finished goods and products;

(iv) all interests in real property of whatever nature, including easements, whether as owner, mortgagee or holder of a Security Interest, lessor, sublessor, lessee, sublessee or otherwise;

(v) all interests in any capital stock or other equity interests of any Subsidiary or any other Person; all bonds, notes, debentures or other securities issued by any Subsidiary or any other Person; all loans, advances or other extensions of credit or capital contributions to any Subsidiary or any other Person; and all other investments in securities of any Person;

(vi) all license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and other contracts, agreements or commitments;

(vii) all deposits, letters of credit and performance and surety bonds;

(viii) all written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals, and materials and analyses prepared by consultants and other third parties;

(ix) all Intellectual Property and licenses from third Persons granting the right to use any Intellectual Property;

(x) all computer applications, programs and other software, including operating software, network software, firmware, middleware, design software, design tools, systems documentation and instructions;

(xi) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents;

(xii) all prepaid expenses, trade accounts and other accounts and notes receivables;

(xiii) all rights under contracts or agreements, all claims or rights against any Person arising from the ownership of any Asset, all rights in connection with any bids or offers and all claims, choses in action or similar rights, whether accrued or contingent;

(xiv) all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution;

(xv) all licenses, permits, approvals and authorizations which have been issued by any Governmental Authority;

(xvi) cash or cash equivalents, bank accounts, lock boxes and other deposit arrangements; and

(xvii) interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements.

“Contract” or “Contracts” means any contract, agreement, lease, license, sales order, purchase order, instrument or other commitment that is binding on any Person or any part of its property under applicable law.

“Insurance Policies” means insurance policies pursuant to which a Person makes a true risk transfer to an insurer.

“Insured TidalWire Liabilities” means any TidalWire Liability to the extent that (i) it is covered under the terms of Akibia’s Insurance Policies in effect prior to the Distribution Date and (ii) TidalWire is not a named insured under, or otherwise entitled to the benefits of, such Insurance Policies.

“Intellectual Property” means all domestic and foreign patents and patent applications, together with any continuations, continuations-in-part or divisional applications thereof, and all patents issuing thereon (including reissues, renewals and re-examinations of the foregoing); design patents, invention disclosures; mask works; copyrights, and copyright applications and registrations; Web addresses, trademarks, service marks, trade names, and trade dress, in each case together with any applications and registrations therefor and all appurtenant goodwill relating thereto; trade secrets, commercial and technical information, know-how, proprietary or confidential information, including engineering, production and other designs, notebooks, processes, drawings, specifications, formulae, and technology; computer and electronic data processing programs and software (object and source code), data bases and documentation thereof; inventions (whether patented or not); utility models; registered designs, certificates of invention and all other intellectual property under the laws of any country throughout the world.

“Liability” or “Liabilities” means all debts, liabilities, guarantees, assurances, commitments and obligations, whether fixed, contingent or absolute, asserted or unasserted, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including, without limitation, whether arising out of any Contract or tort based on negligence or strict liability) and whether or not the

IN WITNESS WHEREOF, each of the parties has caused this General Assignment and Assumption Agreement to be executed on its behalf by its officers thereunto duly authorized on the day and year first above written.

AKIBIA, INC.

TIDALWIRE INC.

By: *Thomas Tucker*

By: *Jeffrey Brandes*

Name and Title: Thomas Tucker, CFO

Name and Title: Jeffrey Brandes, CEO

Date: 04/04/01

Date: 4/4/01

PSI HOLDING, INC.

By: *Thomas Tucker*

Name and Title: Thomas Tucker, CFO

Date: 04/04/01

Schedule 1.2 Specific TidalWire Assets to be Transferred

Cash	\$	200.00
Inventory (Production/Refurbed/Reserves)	\$	3,985,243.00
Prepaid Insurance	\$	5,505.00
Prepaid Expenses	\$	10,552.00
Fixed Assets		
At Cost	\$	716,293.00
Accumulated Depreciation	\$	<u>(31,951.00)</u>
Net Fixed Assets	\$	684,342.00
Total Assets	\$	4,685,842.00

Trademark TidalWire

Licenses Office 97, Polarsoft, Flash, Pagemaker, Illustrator, Front Page, Photoshop
 PC Anywhere, Win NT 4.0 Service Pack 6a, SQL Server 7.0
 NT4
 Siebel eSales 2000
 Siebel Epricer 2000
 Siebel eConfigurator
 Siebel Quotes 2000
 Siebel Pricer 2000
 Siebel .COM Server 2000
 Siebel Configurator 2000
 Siebel Order Entry 2000
 Siebel Client Access Licenses
 Siebel Sales Enterprise
 Siebel System Software
 Siebel Tools
 Resolution
 Site Deployment Manager
 Client Access Licenses (CALs)
 ASPQmail
 Verisign