

09-27-2004

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

DEPARTMENT OF COMMERCE  
Patent and Trademark Office



RECOR 102845208  
TRADEMARKS OFFICE

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

9.23.04

1. Name of conveying party(ies)/Execution Date(s):

Speakeasy, Inc.

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

Citizenship (see guidelines)

Execution Date(s)

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance:

- Assignment
  - Security Agreement
  - Other
  - Merger
  - Change of Name
- January 13, 2004

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: Scott Weiss  
Internal Speakeasy Communications Consulting LLC  
Address: Suite 600, Atlantic Center Plaza

Street Address: 1180 W. Peachtree Street

City: Atlanta

State: GA

Country: USA Zip: 30309

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

73188294

B. Trademark Registration No.(s)

1167718

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Hertz, Schram & Saretsky, P.C.

Internal Address: Howard Hertz, Esq.

Street Address: 1760 S. Telegraph, #300

City: Bloomfield Hills

State: MI Zip: 48302

Phone Number: 248-335-5000

Fax Number: 248-335-3346

Email Address: hhertz@hssc.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

9. Signature:

Howard Hertz, Esq.

Signature

Date

Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

09/24/2004 6TON11 00000077 73188294

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TRADEMARK  
REEL: 003058 FRAME: 0452

## AGREEMENT TO PURCHASE ASSETS

This Agreement to Purchase Assets ("**Agreement**") is entered into this 13th day of January, 2004, by and between Speakeasy Communications Consulting, LLC, a Michigan limited liability company, ("**Purchaser**"), and Speakeasy, Inc., a Georgia corporation ("**Seller**") and, for the limited purposes specified herein, Scott S. Weiss, an individual resident of the State of Georgia ("**Weiss**") and Sandra G. Linver, an individual resident of the State of Georgia ("**Linver**"). Purchaser and Seller are sometimes referred to collectively herein as "**Parties**" and individually as a "**Party**."

### RECITALS

A. Seller provides private consulting services to senior business executives and training programs and workshops to clients of Seller and the general public regarding effective spoken communication, interactive speaking skills and voice coaching (the "**Business**").

B. The principal places of business for the Business are Suite 600, Atlantic Center Plaza, 1180 West Peachtree Street, Atlanta, Georgia 30309 (the "**Atlanta Location**") and 343 Sansome, San Francisco, California (the "**San Francisco Location**") (collectively, the "**Locations**").

C. Linver is the sole shareholder of Seller.

D. Seller has employed Weiss as Seller's Executive Vice President and Weiss has been responsible for the general operations of the Business for several years. Weiss owns seventy-five percent (75%) of the membership interests in and is the sole manager of Purchaser, and BTG Speakeasy LLC, a Michigan limited liability company ("**BTG Speakeasy LLC**") owns twenty-five percent (25%) of the membership interests in Purchaser.

E. Purchaser wishes to purchase from Seller, and Seller is willing to sell to Purchaser, the Assets (as defined below) upon the terms and conditions set forth in this Agreement.

In consideration of the mutual covenants, agreements and warranties contained herein, and for other good and valuable consideration, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

For purposes of this Agreement, any amendments to this Agreement and any exhibits or schedules attached hereto, the terms delineated below will have the following meanings, except as otherwise expressly provided in the text of this Agreement:

- 1.1 "Assets" has the meaning set forth in Section 2.1.
- 1.2 "Business" has the meaning set forth in Recital A.
- 1.3 "CERCLA" means the Comprehensive Environmental Response Compensation Act.

1.4 "Claim Notice" has the meaning set forth in Section 10.2a.

1.5 "Closing" has the meaning set forth in Section 3.2.

1.6 "Closing Date" has the meaning set forth in Section 5.1.

1.7 "Closing Payment" has the meaning set forth in Section 3.2a.

1.8 "Effective Date" has the meaning set forth in Section 5.1.

1.9 "Environmental Laws" has the meaning set forth in Section 6.8.

1.10 "Financial Statements" has the meaning set forth in Section 6.13.

1.11 "Indemnitee" has the meaning set forth in Section 10.2a.

1.12 "Indemnifying Party" has the meaning set forth in Section 10.2a.

1.13 "Intellectual Property Rights" means all trademarks, trademark applications, trade names, service marks, service mark applications, Internet domain names, Internet or World Wide Web URLs or addresses, copyrights, copyright applications, know-how, trade secrets, customer lists, proprietary processes and formulae, all source and object codes, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records used in the Business as it is presently conducted.

1.14 "Knowledge" means the actual knowledge of Linver outside of information actually known by Weiss.

1.15 "Linver" has the meaning set forth in Recital C.

1.16 "Locations" has the meaning set forth in Recital B.

1.17 "Losses" has the meaning set forth in Section 10.1a.

1.18 "Purchase Price" has the meaning set forth in Section 3.1.

1.19 "Purchaser" has the meaning set forth in the preamble.

- Act.
- 1.20 "RCRA" means the Federal Resources Conservation and Recovery Act.
- 1.21 "Seller" has the meaning set forth in the preamble.
- 1.22 "Supplies" has the meaning set forth in Section 2.1e.

## ARTICLE II

### PURCHASE AND SALE

2.1 **Assets.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign, transfer and convey to Purchaser, and Purchaser agrees to purchase from Seller, the following assets and properties owned by Seller or in which Seller has any right or interest and used or usable in connection with the operation of the Business (the "**Assets**"):

- a. All furniture, trade fixtures, and equipment and other fixed assets owned by Seller and used in the Business, including those items listed on Schedule 2.1a attached to this Agreement.
- b. The goodwill of the Business as a going concern and, to the extent assignable at no additional cost to Seller, the Business telephone book directory advertisements, and any other advertisements that are the property of the Business.
- c. All right, title and interest of Seller in the (i) telephone numbers of the Business, including the following: (404) 541-4800, (800) 221-7432, (415) 434-2682, and any and all direct dial extension numbers related to the above-referenced numbers; and (ii) facsimile numbers of the Business, including the following: (404) 541-4848, (404) 541-6994 and (415) 434-4112.
- d. All right, title and interest of Seller in the name, "**Speakeasy**" and any variations thereof or assumed names.
- e. All right, title and interest of Seller in (i) the email address(es) servicing the Business, including: www.speakeasyinc.com and info@speakeasyinc.com; (ii) the following Internet domains: Speakeasyinc.com; Speakeasyinc.org, Speakeasyinc.biz, and Speakeasyinc.info; (iii) the Domain IP range 65.83.40.32/27; (iv) Subnet mask 255.255.255.224; and (v) IP range 65.83.40.33 to 65.83.40.63akeasyinc.com.

- f. All right, title and interest of Seller in all materials, in any form whatsoever, relating to the Business, including, but not limited to, course-work, training materials, computer software, video and/or audio recordings, presentations, internet publications, wherever located, created or otherwise used in the Business, as more fully set forth in Schedule 2.1f attached to this Agreement ("**Supplies**").
- g. All right, title and interest of Seller in all computer software, keys and all other indicia of possession, security alarm codes, licenses and permits, certificates and, to the extent assignable, licenses and approvals and other governmental authorizations necessary to own the Assets and operate the Business as it is presently being conducted.
- h. All right, title and interest of Seller in all Intellectual Property Rights, including, but not limited to, Intellectual Property Rights related to the following:
- (i) "Speakeasy" marks and registrations;
  - (ii) Course outlines and curriculum training material;
  - (iii) Course Binder (used for all open-enrolment courses);
  - (iv) Course hand-outs and exercises;
  - (v) "Breathe For Results;"
  - (vi) "Plan for Results" electronic planner;
  - (vii) "Visuals Planner;
  - (viii) Marketing folder;
  - (ix) Brochure;
  - (x) Course descriptions;
  - (xi) Electronic course descriptions;
  - (xii) Web page;
  - (xiii) Business cards; and
  - (xiv) Letterhead.
- i. All right, title and interest of Seller under the contracts and agreements assigned pursuant to Section 2.4, including all right, title and interest of Seller in all representations, warranties, covenants and guarantees made by third parties with respect to the Assets.
- j. All paper goods, stationary, containers, forms, labels, brochures, art work, photographs, advertising and promotional materials, and any similar items owned by Seller.
- k. All of Seller's records and lists that pertain directly or indirectly, in whole or in part, to any one or more of the

following: Seller's customers, suppliers, advertising, promotional material, sales, services, delivery or operations of the Business, including property records, environmental compliance records, credit data, and service and warranty records.

- i. All right, title and interest of Seller in security deposits, prepaid expenses, and similar items paid by Seller (so long as Purchaser assumes the obligations and duties of Seller associated with such deposits, expenses and similar items under Section 2.4) relating to the Business or the Locations as set forth on Schedule 2.11 attached to this Agreement (other than any such item relating to an Excluded Asset).
- m. All of Seller's books and records relating to employees of Seller, provided, however, (i) Seller may retain a copy of such documents (or to the extent Seller does not make copies thereof prior to the Closing, Seller will have access to such books and records after the Closing and may make copies thereof from time to time as needed), and (ii) Purchaser will not, for a period of six (6) years after the Effective Date, discard or destroy any such books and records without Seller's prior written consent which consent Seller shall not unreasonably withhold.
- n. Seller's accounts receivable relating to invoices delivered by Seller to customers the services pertaining to which will be performed by Seller or Purchaser following the Effective Date, and for which payment has not been received prior to the Effective Date (the "Assigned Receivables").

**2.2 Excluded Assets.** Notwithstanding anything to the contrary herein, the following assets of Seller or Linver (or any affiliate of Seller or Linver) shall be retained by Seller, Linver or such affiliate, and are not being sold or assigned to Purchaser hereunder, and shall not constitute Assets (the "**Excluded Assets**"):

- a. facsimile machine at Linver's home office;
- b. printer at Linver's home office;
- c. laptop computer and dictation machine used by Linver;
- d. all of the contents of Linver's office at the Atlanta location including, but not limited to, all furniture and art work located therein;

- e. Seller's cash, cash equivalents, bank and other accounts at financial institutions and accounts receivable, except the Assigned Receivables;
- f. Seller's books and records relating to any records required by applicable law to be retained by Seller, accounting, taxes, corporate organization or to any other Excluded Asset, or to any liability or obligation not assumed by Purchaser; **provided, however**, Purchaser shall have access to such books and records as are necessary to conduct the Business after the Effective Date, including responding to any inquiry by a governmental authority.
- g. Any right, title or interest of Seller in any receivable owed by Seller to Linver or any other liability or obligation to Seller of Linver or any affiliate of Linver or any affiliate of Seller.
- h. All insurance policies of Seller and rights thereunder, each of which is listed on Schedule 2.2h attached to this Agreement.
- i. All claims for tax refunds and other governmental charges of whatever nature.
- j. All rights of Seller under this Agreement, the Note (as defined below), the Security Agreement (as defined below), and any other documents required to be delivered hereunder.
- k. Purchaser acknowledges that Linver and her affiliate, Speakeasy Consulting, Inc. have certain relationships with The Coca Cola Company and Accenture that are not part of Seller's Business and will not be transferred hereunder.
- l. All stock and securities in any other person held by Seller.
- m. Books purchased by Seller prior to the Effective Date for distribution to participants in courses conducted through the Business titled, "Speak and Get Results" and "Good Enough Isn't," and vinyl course binders purchased by Seller after the Effective Date but ordered prior to the Effective Date for distribution to participants in courses conducted through the Business (and the outstanding order for such binders).

**2.3 Assumption of Obligations and Liabilities.** As of the Effective Date, Purchaser shall assume and become responsible for all of the liabilities and obligations of Seller under the agreements, contracts, employment contracts,

leases, licenses and other arrangements of the Business identified on Schedule 2.3 attached to this Agreement (the "**Assumed Liabilities**"). Other than the Assumed Liabilities, the Parties agree that Purchaser will not assume, accept or undertake any liabilities or obligations of Seller, except as otherwise provided in this Agreement.

**2.4 Assignment of Contracts.** Seller and Purchaser shall execute the General Assignment and Assumption of Contracts attached to this Agreement as Exhibit 2.4 assigning to Purchaser all of the contracts, agreements, and schedules, including service contracts, equipment leases and options, to which Seller may be a Party with respect to the Assumed Liabilities.

**2.5 Prorations; Adjustments.**

- a. There shall be adjusted and prorated between Seller and Purchaser as of the Effective Date, all fees, expenses and other receipts and payments related to the contracts, leases, agreements and other arrangements of Seller being transferred under this Agreement, ad valorem taxes, and all other items necessary to allocate the benefits and burdens of ownership of the Assets and operations of the Business before the Effective Date to Seller and on and after the Effective Date to Purchaser. All documentary transfer taxes, recording fees and other transfer taxes shall be paid by Purchaser.
- b. Except as noted in Section 2.1n, Seller is not selling, and Purchaser is not purchasing, Seller's accounts receivable existing as of the Effective Date. Further, Seller is not transferring, and Purchaser is not assuming, Seller's accounts payable existing as of the Effective Date. Immediately prior to the Closing, Seller shall prepare and deliver to Purchaser a statement listing all items that are adjustments to the Closing Payment or are to be prorated between Purchaser and Seller under this Agreement, prepared in a manner consistent with the historical accounting practices of Seller and such statement shall be attached to this Agreement as Exhibit 2.5(b) (the "**Closing Prorations Statement**"). Seller or Purchaser, as the case may be, shall pay to the other Party any net amount in favor of such other Party at the Closing (or if the amount thereof is not then ascertainable for any item, the Parties shall pay at Closing based on an estimate of the amount thereof and reconcile the proration, as soon thereafter as practicable). With respect to the accounts receivable of Seller other than the Assigned Receivables, Purchaser shall collect such



accounts receivable after the Closing on Seller's behalf in accordance with Section 8.3.

## ARTICLE III

### PURCHASE PRICE

**3.1 Consideration and Allocation.** In consideration of Seller's transfer of the Assets to Purchaser, Purchaser agrees to pay to Seller the sum of \_\_\_\_\_ dollars (\$) (the "**Purchase Price**"). The Purchase Price shall be allocated as set forth on Schedule 3.1 attached to this Agreement. The allocation of the Purchase Price in this Section shall be binding upon the Parties and their respective affiliates for all purposes, including, but not limited to, financial accounting purposes, financial and regulatory reporting purposes and tax purposes. None of the Parties or any of their affiliates shall take any position for tax purposes or any position in any tax return, audit, report, form, declaration, or questionnaire that is inconsistent with such allocation. At Closing, Purchaser and Seller shall execute and deliver all such forms and documents required by all governmental taxing authorities to evidence such allocation.

**3.2 Payment of Purchase Price.** At the closing of the sale of the Assets (the "**Closing**"), Purchaser shall pay to Seller the Purchase Price as follows:

- a. Purchaser shall pay \_\_\_\_\_ dollars (\$) by wire transfer of immediately available funds as adjusted by the prorations and other adjustments set forth in the Closing Prorations Statement (the "**Closing Payment**"); and
- b. Purchaser shall deliver an executed promissory note (the "**Note**") to Seller for the balance of the Purchase Price in substantially the same form as Exhibit 3.2b attached to this Agreement. The Note shall provide for the payment of the principal amount of \_\_\_\_\_ dollars (\$) (the "**Loan Amount**"), and shall be personally guaranteed by Weiss pursuant to a guaranty in form and substance satisfactory to Seller. The Loan Amount shall not bear interest for the period commencing on the Closing Date and ending twenty-four months thereafter. Commencing on the second anniversary of the Closing Date and continuing thereafter, any outstanding balance of the Loan Amount shall accrue interest at the rate of \_\_\_\_\_ percent ( %) per annum, as provided in the Note. Purchaser shall, upon the earlier of (i) full satisfaction of the promissory note delivered by Purchaser to BTG Speakeasy LLC evidencing a loan (the "**BTG Loan**") by BTG Speakeasy LLC to Purchaser in the amount of \_\_\_\_\_ dollars

( \$ ) (the "BTG Note") and (ii) the eight year anniversary of the BTG Note, be obligated to begin to pay the principal balance of the Note as of such date, with payments to be made in sixty (60) consecutive equal monthly installments, including the accrued interest thereon if applicable at such time, commencing on the first day of the month immediately following the satisfaction of the BTG Note. Purchaser may prepay the Note without penalty. If Seller is required to indemnify Purchaser under Section 10.1a, Purchaser shall first offset certain amounts against the balance of the Loan Amount under Section 10.3.

**3.3 Security.** As collateral security for the payment of the Note, Purchaser shall grant to Seller a security interest in the Assets in accordance with a Security Agreement in substantially the same form as Exhibit 3.3 attached to this Agreement. Seller acknowledges and agrees that Seller's rights under the Note and the Security Agreement shall be subordinate to the payment and lien rights granted to BTG Speakeasy LLC under the BTG Note and related Security Agreement to the extent and on the terms provided in the Note and the Security Agreement.

**3.4 Satisfaction of Note from Life Insurance or Sale Proceeds.** Purchaser shall obtain not later than thirty (30) days after the Closing Date a life insurance policy to secure the payment of the Note, insuring the life of Weiss for dollars ( \$ ) or more and provide Seller with evidence satisfactory to Seller that Seller shall have the direct right (as beneficiary or partial assignee or otherwise) to receive not less than an amount equal to any unpaid Obligations under the Note of proceeds from the policy issuer on the death of Weiss, free and clear of any mortgage, pledge, claim, lien, charge, security interest or encumbrance or other right of BTG Speakeasy LLC or any other lender or person, all of the forgoing to be pursuant to documentation reasonably satisfactory to Seller. The Note shall provide that in the event of Weiss' death, the obligations under the Note will be accelerated, and payment thereof made as provided by the Note. Any life insurance proceeds payable under such policy in excess of the balance of principal and accrued and unpaid interest paid in full satisfaction of the Note shall be paid to Purchaser. In the event Purchaser sells or transfers, at any time prior to the full satisfaction of the Note, all or substantially all of its assets or the initial Members of Purchaser sell, collectively, 50% or more of their Membership Interests to one or more third parties who are not initial Members of Purchaser, the obligations under the Note shall be accelerated, and Purchaser shall, subject to the senior rights and interests granted to any primary unaffiliated institutional lender to the Purchaser or under the BTG Note and the related Security Agreement as provided in the Note and Security Agreement, pay the balance of principal and accrued and unpaid interest on the Note as of the closing date of such transaction to Seller in satisfaction of the Note.

3.5 Payment of Interest to Seller. Interest shall accrue on the Closing Payment at the rate of \_\_\_\_\_ percent ( %) per annum, for a period commencing on the Effective Date and terminating on the Closing Date. Purchaser shall, at Closing, pay to Seller the amount of such accrued and unpaid interest.

## ARTICLE IV

### TAXES, PAYROLL AND UTILITIES

4.1 Taxes. Seller shall be responsible for the payment of all taxes relating to the Business and the Assets, including, but not limited to, personal property taxes, covering the period up to and including the day before the Effective Date, which responsibility will extend to, but not necessarily be limited to, sales tax (on the operation of the Business), use tax (on the operation of the Business), federal withholding and social security taxes, withholding taxes and unemployment taxes, and state business taxes. Purchaser shall be responsible for the payment of all of such taxes accruing on the Effective Date and thereafter, and shall pay any tax imposed as a result of the transfer of the Assets under this Agreement.

4.2 Utilities. Utilities servicing the Locations are provided by the landlords of the Locations under the provisions of the office leases for the Locations.

4.3 Payroll. The Parties acknowledge that the next regularly scheduled payroll of Seller prior to the Effective Date is December 26, 2003. After the Effective Date, Purchaser shall cause its current Controller and its outside payroll vendor to run an extra, final payroll on behalf of Seller for the period between the employment period covered by the December 26, 2003 payroll through the Effective Date. Purchaser will cooperate with Seller in running such last payroll and, thereafter, Purchaser will assume Seller's account or coordinate its own payroll with Seller's outside payroll vendor.

## ARTICLE V

### CLOSING

5.1 Closing. Seller and Purchaser have executed this Agreement as of the date indicated in the first paragraph of this Agreement ("**Closing Date**"); **provided, however**, that the Closing shall not occur until such time as (i) Seller has received the landlords' consents to assign the leases for the Atlanta Location and the San Francisco Location to Purchaser pursuant to which consent the landlords will release Seller from any further obligations under such lease as of the Effective Date; and (ii) Seller has delivered to Purchaser an executed Consent to Assignment of Employment Contract, as described in Section 9.1, for a minimum of twenty-five (25) employees of Seller. The transactions

contemplated by this Agreement shall be treated by the Parties as effective as of 12:01 a.m. on January 1, 2004 (the "**Effective Date**").

**5.2 Method of Closing and Escrow.** Unless the Parties otherwise agree, the Closing shall take place through the use of facsimile and overnight mail. On or before the Closing Date, Purchaser shall deliver to its counsel identified in Section 12.4, Hertz, Schram & Saretsky, PC ("**HSS**"), the documents and instruments (fully executed) and the required payment to be delivered by Purchaser pursuant to Section 5.3, and Seller shall deliver to its counsel identified in Section 12.4, Kilpatrick Stockton, LP ("**Kilpatrick**"), the documents and instruments (fully executed) to be delivered by Seller pursuant to Section 5.4, to be held in escrow by each Party's counsel subject to the terms of this Section 5.2. Counsel for each Party shall hold the documents, instruments and payment delivered to it until such time as the conditions set forth in Subsections 5.1(i) and (ii) are satisfied. Upon satisfaction of the conditions set forth in Section 5.1, and upon confirmation by each of HSS and Kilpatrick to the other that it is continuing to hold the aforementioned documents and instruments, as applicable, and with respect to HSS, the Closing Payment, in escrow for delivery and that the respective Parties delivering same have not withdrawn the escrow agents' authority to deliver such items in connection with the Closing, each of HSS and Kilpatrick will deliver the aforementioned items held by it to the Seller or Purchaser, as applicable, via facsimile transmission or wire transfer, as the case may be (followed by overnight delivery of manually signed counterparts of each executed document or instrument). All deliveries and payments relating to the Closing shall be interdependent and none shall be effective until all are effective (except to the extent that a Party entitled to the benefit thereof has waived in writing the satisfaction or performance thereof as a condition precedent to Closing). If the aforementioned documents, instruments and payments have not been delivered out of escrow to the proper recipient by 5:00 p.m. on January 16, 2004, each item held in escrow shall be delivered by each of HSS and Kilpatrick to the person who delivered such item. Acceptance by counsel of the documents and instruments under this Section is subject to the following terms and conditions, which the Parties hereby agree shall govern and control the respective rights, duties, liabilities and obligations of counsel.

- a. HSS and Kilpatrick are not parties to this Agreement and are not bound by any agreement that may be evidenced by or arise out of instructions other than expressly set forth herein. HSS and Kilpatrick function strictly as a depository agent for the limited purposes set forth in this Section 5.2, and are neither responsible nor liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the documents and instruments delivered to each Party, or for the genuineness or authenticity of any signature thereon. Further, neither HSS nor Kilpatrick shall be liable to anyone for any damages, losses or expenses which any person may

incur with respect to any action taken or omitted to be taken in reliance upon any document (including any facsimile, email or other electronic document), including any notice or instruction provided for in this Section 5.2, not only as to its due execution or origination and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which each of HSS and Kilpatrick shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons and to conform with the provisions of this Agreement.

- b. Upon HSS' and Kilpatrick's delivery of the documents, instruments and payments in their possession and their performance of any other services delineated above, provided the services have been undertaken in good faith and without gross negligence or willful misconduct, HSS and Kilpatrick will be released and acquitted from any further liability concerning the terms of this Section 5.
- c. Notwithstanding any provision of this Agreement to the contrary, each of HSS and Kilpatrick shall be entitled at its discretion to follow any and all contrary directions or conditions received from the person or persons who deposited documents, instruments or payments with such escrow agent.
- d. Each Party will reimburse their respective counsel for all reasonable out-of-pocket expenses incurred by such counsel in the performance of its duties hereunder, including reasonable attorneys fees.
- e. Neither HSS nor Kilpatrick shall have liability under this Section 5.2 unless such party failed to act in good faith and committed gross negligence or willful misconduct. Neither HSS nor Kilpatrick shall be under any obligation to take any legal action in connection with this Section 5.2, or to appear in, prosecute or defend any action or legal proceeding.
- f. THE PARTIES RELEASE HSS AND KILPATRICK FROM ANY OTHER OBLIGATIONS THAT MAY NOT BE CONTAINED IN THIS SECTION 5.2. THE PARTIES SHALL INDEMNIFY AND HOLD HSS AND KILPATRICK HARMLESS FROM ANY LIABILITIES, INCLUDING REASONABLE ATTORNEY FEES, THAT MAY BE CLAIMED, OR ARISE, AGAINST HSS AND KILPATRICK,

UNLESS SUCH LIABILITIES ARE DIRECTLY CAUSED BY HSS' OR KILPATRICK'S FAILURE TO ACT IN GOOD FAITH AND ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS SECTION 5.2.

**5.3 Documents and Instruments to be Delivered by Purchaser.** At the Closing, Purchaser shall deliver to Seller the following documents and instruments:

- a. Immediately available funds by wire transfer in the amount of the Closing Payment and accrued and unpaid interest in accordance with Section 3.5;
- b. The executed Note;
- c. The executed Security Agreement;
- d. A Certificate of Good Standing from the State of Michigan;
- e. The executed General Assignment and Assumption of Contracts;
- f. Copies of the executed operating agreement of Purchaser (the "**Operating Agreement**") and a resolution of the Members and Manager of Purchaser evidencing Purchaser's power and authority to enter into and perform this Agreement, and the Articles of Organization of Purchaser;
- g. Copies of the executed BTG Note and related executed Security Agreement;
- h. A certificate executed by Weiss certifying that, to the best of Weiss' actual knowledge, no facts or circumstances exist as of the Closing Date that would render any of the representations and warranties made by Seller under Article VI false or inaccurate;
- i. Such additional bills of sale, assignments, assumption agreements and other documents as the Parties may mutually agree; and
- k. A Closing Statement executed by Purchaser evidencing the (i) prorated and adjusted items and correlating amounts and adjustments; and (ii) the Closing Payment.

**5.4 Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Purchaser the following documents and instruments:

- a. Such additional bills of sale, assignments, assumption agreements and other documents as the Parties may mutually agree;
- b. An assignment and assumption of the lease for the Atlanta Location;
- c. An assignment and assumption of the lease for the San Francisco Location;
- d. The executed General Assignment and Assumption of Contracts;
- e. A certificate from Seller and, to the extent reasonably available, all governmental forms requested by Purchaser, certifying that Seller has paid all taxes, licenses and fees, of whatever kind and nature, including, but not limited to, all sales taxes, income taxes, single business taxes, personal property taxes, franchise fees, FICA, state unemployment compensation, and state workers compensation contributions required to be paid by Seller (except for any such taxes or fees not yet due) with respect to its ownership of the Assets and operation of the Business;
- f. UCC-3 Termination Forms for any existing financing statements on record evidencing the Assets as security; and
- g. A completed and signed IRS Form 8594 setting forth an allocation for the Purchase Price in accordance with Schedule 3.1, attached to this Agreement;
- h. A resolution of the shareholders and directors of Seller evidencing Purchaser's power and authority to enter into and perform the obligations under this Agreement;
- i. A Certificate of Good Standing from the State of Georgia;
- j. A Release of Weiss from his Employment Agreement (and the covenants set forth therein) with Seller in accordance with Section 8.4; and
- k. A Closing Statement and funds flow memorandum executed by Seller evidencing the (i) prorated and adjusted items and correlating amounts and adjustments; (ii) the Closing Payment; and (iii) wire instructions for the Closing Payment.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as follows:

**6.1 Power.** Seller has the requisite power to enter into this Agreement and will have, at the Closing Date, all of the requisite power to sell the Assets and to carry out and perform all obligations of Seller under the terms of this Agreement. Seller is not a party to, subject to, or otherwise bound by any other agreement, arrangement, or understanding, written or otherwise, that prohibits, restricts, or in anyway whatsoever conflicts with Seller's ability to enter into and fulfill Seller's obligations under this Agreement.

**6.2 Authorization.** This Agreement is the valid and binding obligation of Seller, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and moratorium laws and other laws of general application affecting the enforcement of creditors' rights generally. The execution, delivery and performance by Seller of this Agreement and Seller's compliance with this Agreement will not result in any violation of and will not conflict with, or result in any breach of any of the terms of, or constitute a default under, any provision of any state or federal law to which Seller is subject, on any mortgage, indenture, agreement (including any franchise agreements), instrument, judgment, decree, order, rule or regulation or other restriction to which Seller is a party or by which Seller is bound, or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon the Assets or any part thereof, pursuant to any such provision.

**6.3 Taxes.** Seller has filed with or will file within the time prescribed by law (including any extensions of time provided by the appropriate taxing authority) all tax returns and reports required to be filed with the United States Internal Revenue Service and the States of Georgia and California and with all other jurisdictions where such filing is required by law. Seller has paid, or made adequate provision for the payment through the Closing Date, of all such taxes, interest, penalties, assessments, or deficiencies shown to be due or claimed to be due on or in respect of such tax returns and reports. There are (i) no other tax returns or reports that are required to be filed that have not been so filed; and (ii) no unpaid assessments for additional taxes for any fiscal period.

**6.4 Tax Audit.** Except as disclosed on Schedule 6.4 to this Agreement, there has been no audit of any tax return filed by Seller and no audit of any such tax return is in progress, and Seller has not received any notice from the Internal Revenue Service that an audit is contemplated or pending.

**6.5 Contracts.** To Seller's Knowledge based on Seller's review of Schedule 2.3 attached to this Agreement after due inquiry of Weiss, except for



contracts or agreements that involve the payment of less than \$10,000 in aggregate consideration during any 12-month period or are cancelable upon 30 days' notice, true and complete copies of all contracts or agreements concerning the Business (except Excluded Assets) have been made available to Purchaser and are listed on Schedule 2.3 attached to this Agreement. To Seller's Knowledge, except as otherwise disclosed in such Schedule or as may be related to any Excluded Asset, Seller is not a party to or bound by any written or oral:

- a. contract not made in the ordinary course of the Business;
- b. employment contracts or agreements;
- c. contract with any labor union or association;
- d. bonus, pension, profit-sharing, retirement, stock subscription or purchase, hospitalization, insurance or other plan providing employee benefits;
- e. lease with respect to any property, real or personal, whether as lessor or lessee;
- f. continuing contract for the future purchase of materials, supplies or equipment in excess of the requirements of normal operating inventory; or
- g. contracts or commitments for capital expenditures.

**6.6 Title to Assets; Liens, Encumbrances and Restrictions.** Seller owns and as of the Effective Date will convey and transfer to Purchaser the Assets, free and clear of any and all mortgages, pledges, liens, security interests, conditional sale agreements or other encumbrances of every kind and nature, except (i) liens for taxes not yet due and payable, or (ii) rights under this Agreement, the Security Agreement and the other documents entered into in connection herewith or identified hereunder.

**6.7 Condition of Purchased Assets.** To Seller's Knowledge, all Assets and the physical and mechanical components of all structures and improvements situated at the Locations are in working order suitable for the use in the Business as existing as of the date of this Agreement, and have been regularly maintained and repaired in a customary manner for maintaining and repairing such property.

**6.8 Environmental Matters.** To Seller's Knowledge, there has been no deposit of hazardous or toxic waste or other hazardous or toxic substances in the Locations, and there has been no other activity that could contaminate the soil or ground water. As used in this Agreement, "**hazardous**" or "**toxic**" shall mean and include all hazardous and toxic substances, wastes, materials,

pollutants, or contaminants (including, without limitation, asbestos and raw materials that include hazardous constituents), or other similar substances or materials that are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulations, contamination or clean-up, including, without limitation, the Comprehensive Environmental Response Compensation Act ("**CERCLA**"), Federal Resources Conservation and Recovery Act ("**RCRA**"), the Superfund Amendments and Reauthorization Act, the Michigan Environmental Response Act, and the State Super Lien or other environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "**Environmental Laws**"). The Locations have never been used by Seller or, to Seller's Knowledge, any tenants or prior owners of the Locations, to generate, manufacture, refine, transport, treat, store, handle or dispose of any "hazardous" or "toxic" substances. To Seller's Knowledge, the Locations have never contained asbestos, PCBs or any other toxic materials, irrespective of whether any such materials were used in the construction of or stored on the Locations. To Seller's Knowledge, (i) Seller has not violated any Environmental Laws with respect to the Locations, (ii) Seller has not received any notice from any governmental authority of any claimed violation of any Environmental Laws with respect to the Locations, and (iii) Seller does not have any reason to believe any such possible violation may exist.

**6.9 Litigation.** There is neither pending nor threatened any action, suit, proceeding or claim, including condemnation proceedings, before any court or government agency or administrative forum with respect to the Assets or the operation of the Business, or any basis therefor or threat thereof, to which Seller is or may be named as a party, or to which the Assets, or the Business or any part thereof are or may be subject.

**6.10 Consents.** To Seller's Knowledge, all material consents or approvals of any third party required to assign any contract or agreement hereunder are set forth on Schedule 6.10 attached hereto.

**6.11 Compliance with Other Instruments.** To Seller's Knowledge, Seller is not in violation of any term of any lease, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation to which Seller is subject and a violation of which would have any effect upon the Assets or upon the sale thereof to Purchaser.

**6.12 Insurance.** To Seller's Knowledge, Seller has in full force and effect insurance policies on the Business, with coverage deemed reasonable by Seller. Seller has made available to Purchaser through Weiss true and correct copies of all such insurance policies.

**6.13 Financial Statements.** Seller has delivered to Purchaser copies of financial statements for year-end accounting purposes for 2002 (the "**2002 Financial Statements**") and a profit and loss statement for November, 2003 ("**Profit and Loss Statement**") identified on Schedule 6.13 attached to this

Agreement (the 2002 Financial Statements and the Profit and Loss Statement are sometimes collectively referred to in this Agreement as the "**Financial Statements**"). The Financial Statements present fairly in all material respects the financial condition of the Business and results of the Business operations for the periods indicated, subject to normal year-end adjustments and to the absence of footnotes and other presentation items. Since the date of the Profit and Loss Statement, except as set forth in Schedule 6.13, there has not been:

- a. any material adverse change in the financial condition of the Business;
- b. any material change in any method of accounting or accounting practice used by Seller for the Business, except as required by law or resulting from a change in generally accepted accounting principles (provided that Seller may change its method of tax accounting from cash basis to accrual basis for the 2003 tax year);
- c. any material increase in compensation, bonus or other benefits payable or to become payable by Seller to any of Seller's employees other than in the ordinary course of business;
- d. except for inventory or equipment acquired in the ordinary course of business, any acquisition by Seller of all or any substantial part of the assets, properties, capital stock or business of any other person; or
- e. except in the ordinary course of business, any sale, abandonment or any other disposition of any of the Assets.

**6.14 Tax Liens.** No federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the Assets, which has not been paid or the payment for which adequate provision has not been made.

**6.15 Employee Benefit Plans.**

- a. Schedule 6.15 sets forth a (i) list of each material "employee benefit plan" (as defined by Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and all other written or formal plans or agreements involving direct or indirect compensation or benefits (including any employment agreements entered into between Seller and any employee of Seller, but excluding workers' compensation, unemployment compensation and other government-mandated programs) currently or previously maintained, contributed to or entered into by Seller under

which Seller or any affiliate of Seller as determined in accordance with applicable sections of ERISA has any present or future obligation or liability (collectively, "**Seller Employee Plans**"). Copies of all Seller Employee Plans (and, if applicable, related trust agreements) and all amendments thereto and written interpretations thereof (including summary plan descriptions) have been delivered to Purchaser, together with the three most recent annual reports (Form 5500, including, if applicable, Schedule B thereto) prepared in connection with any such Seller Employee Plan. All Seller Employee Plans that individually or collectively would constitute an "employee pension benefit plan," as defined in Section 3(2) of ERISA (collectively, the "**Seller Pension Plans**"), are identified on Schedule 6.15.

- b. All contributions due from Seller with respect to any of the Seller Employee Plans have been made as required under ERISA or have been accrued on the Financial Statements. To Seller's Knowledge, each Seller Employee Plan has been maintained substantially in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including, without limitation, ERISA and the Code, which are applicable to such Seller Employee Plans.
- c. Seller is not liable for any contributions, tax, lien, penalty, cost, interest, claim, loss, action, suit, damage, assessment or other similar type of liability or expense under Section 412 of the Internal Revenue Code ("**Code**") or Title IV of ERISA or any other applicable law with regard to any Seller Employee Plan any other employee benefit plan (as defined in Section 3(3) of ERISA or any other applicable law) maintained, sponsored or contributed to by any entity that is or was under Section 4001 of ERISA, Section 414 of the Code or any other applicable law considered one employer with Seller.
- d. To Seller's Knowledge, no transaction prohibited by Section 406 of ERISA, Section 4975 of the Code or any other applicable law has occurred with respect to any Seller Employee Plan that is covered by Title 1 of ERISA or any other applicable law, which transaction has caused or will cause Seller to incur any material liability under ERISA, the Code or any other applicable law.

- e. Seller is not currently contributing to and has not in the past contributed to any "multiemployer plan" as defined in Section 3(37) of ERISA or any applicable law.

**6.16 Intellectual Property Rights.** Seller owns all Intellectual Property Rights that are included in the Assets and necessary or required for the operation of the Business in the manner in which it has previously been conducted before the Closing, except for any assets that are Excluded Assets or any aspect of the Business conducted with Excluded Assets or by Linver personally. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated in this Agreement do not and will not constitute a breach of any instrument or agreement governing or affecting any such Intellectual Property Rights, and do not and will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any Intellectual Property Right or impair the right of Seller or Purchaser to use, sell or license any such Intellectual Property Right; there is no royalty, honoraria, fee or other payment payable by Seller to any person by reason of ownership, use, license, sale or disposition of any of the Intellectual Property Rights; and, to Seller's Knowledge, there is no pending or threatened claim or litigation contesting the validity, ownership or right to use, sell, license or dispose of any Intellectual Property Rights nor is there any basis for any such claim, nor has Seller received any notice asserting that any Intellectual Property Right or the proposed use, sale, license or disposition thereof conflicts, or will conflict, with the rights of any other person or entity, nor is there any basis for any such assertion.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

**7.1 Power.** Purchaser has all of the requisite power to enter into this Agreement, the Note and the Security Agreement and will have on the Closing Date all of the requisite power to purchase the Assets and to carry out and perform all of its obligations under the terms of this Agreement, the Note and the Security Agreement. Purchaser is not a party to, subject to, or otherwise bound by any other agreement, arrangement, or understanding, written or otherwise, which prohibits, restricts, or in anyway whatsoever conflicts with its ability to enter into and fulfill its obligations under this Agreement, the Note or the Security Agreement.

**7.2 Authorization.** All action on the part of Purchaser necessary for the authorization, execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated by this Agreement has been taken or will be taken before Closing. This Agreement is a valid and binding obligation of Purchaser, enforceable in accordance with its

terms subject to applicable bankruptcy, insolvency, reorganization and moratorium laws and other laws of general application affecting enforcement of creditors' rights generally. The execution, delivery and performance by Purchaser of this Agreement, the Note and the Security Agreement and Purchaser's compliance with this Agreement, the Note and the Security Agreement will not result in a breach of any of the terms of, or constitute a default under, any provision of state or federal law to which Purchaser is subject or any mortgage, indenture, agreement, instrument, judgment, decree, order, rule or regulation or other restriction to which Purchaser is a party or by which it is bound.

**7.3 Solvency.** Purchaser is, and immediately after the Closing will be, Solvent. "**Solvent**" means, with respect to Purchaser, that (a) the fair value of the property of Purchaser is greater than the total amount of liabilities, including contingent liabilities, of Purchaser; (b) the present fair salable value of the assets of Purchaser is not less than the amount that will be required to pay the probable liability of Purchaser on its debts as they become absolute and matured; (c) Purchaser does not intend to, and does not believe that it will, incur debts or liabilities beyond Purchaser's ability to pay as such debts and liabilities mature; and (d) Purchaser is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which Purchaser's property would constitute an unreasonably small capital.

**7.4 Compliance With Other Instruments.** Purchaser is not in violation of any term of any lease, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation to which Purchaser is subject.

**7.5 Note.** As of the Closing, each of the Note and the Security Agreement will have been duly executed and delivered by Purchaser and will constitute the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

**7.6 BTG Note and Security Agreement.** The BTG Note and the related Security Agreement, the Operating Agreement, and Weiss' Employment Agreement are true and correct copies of all agreements governing the relationship between Weiss and BTG or Purchaser and BTG (or any combination of the foregoing persons).

## ARTICLE VIII

### COVENANTS OF THE PARTIES

**8.1 Further Assurances.** So long as it is not unduly burdensome or unreasonably costly to a Party, each of the Parties shall execute such documents, further instruments of transfer and assignment and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and the transactions contemplated by this Agreement.

**8.2 Post-Closing Cooperation.**

- a. Following the Closing and except as otherwise provided in Subsection 8.3 of this Agreement, each Party agrees to deliver promptly to the other Party all mail, checks and other documents received by such Party that relate to any of the business conducted by such other Party or its affiliates after the Closing.
- b. Within fourteen (14) days after the Closing Date, to the extent available under the applicable State tax clearance procedures and does not require significant expense to Seller, Seller will apply for a Tax Clearance Certificate issued by the Tax Clearance Division of the Georgia Department of Revenue and a Tax Clearance Certificate issued by the Tax Clearance Division of the California Department of Treasury certifying that there are no tax liens of record against Seller and that Seller is not obligated for any taxes which are due and payable to the either Department but which have not been paid. Seller will comply with any reasonable request by the respective Departments of Treasury or any other state agency for documents and payments necessary to process Seller's application for such Certificates.
- c. For a period of 90 days following the Effective Date, Seller shall have access to certain employees of Purchaser, including an assistant (Janice Schmidt so long as available), Controller, Director of Information Services, and Doug Foltz, for the purposes of transitioning the Business to Purchaser and to assist Seller in changing its corporate name and logo design.
- d. Within 15 days of the Effective Date, Seller shall change its corporate name to a name that does not include the

Speakeasy trademark and deliver to Purchaser written evidence of the name change.

- e. Within 90 days of the Effective Date, Seller shall change the name of Speakeasy Consulting, Inc. to a name that does not include the Speakeasy trademark and deliver to Purchaser written evidence of the name change.

**8.3 Accounts Receivable.** For a period of twelve (12) months commencing on the Closing Date, Purchaser shall, on Seller's behalf, use commercially reasonable efforts to collect the accounts receivable of Seller existing as of the Closing Date in accordance with Purchaser's customary billing and collection practices. Payments made on Seller's accounts receivable by customers of the Business shall be applied by Purchaser to the oldest outstanding accounts of such customers. Purchaser shall remit, on or before the 15<sup>th</sup> day of each month after the Closing, any and all amounts received by Purchaser with respect to Seller's accounts receivable. Notwithstanding the foregoing, Purchaser may retain, for its own benefit and account, any payments made with respect to the Assigned Receivables, and Seller appoints Purchaser as its attorney in fact for purposes of endorsing or negotiating any checks or other instruments received in payment of the Assigned Receivables. Nothing set forth in this Section 8.3 shall require Purchaser to file or pursue collection of any account receivable through litigation or alternative dispute resolution procedures, unless Purchaser endeavors to do so on request of Seller as determined in Purchaser's sole discretion.

**8.4 Termination of Weiss Employment Agreement and Release.** At the Closing, Weiss shall tender his resignation from employment under that certain Employment Agreement with Seller dated as of January 1, 1997 and, except with respect to (i) the obligations, duties, representations, covenants, and warranties of the Parties in this Agreement, (ii) the right of Weiss to receive his accrued base salary (but Weiss shall not have any right to a bonus or other management participation payment), and (iii) his rights under any employee benefit plan of Seller, Weiss hereby agrees not to bring any type of claim related to any matter that occurred on or before the Effective Date and hereby releases and forever discharges Seller and Linver and their respective officers, directors, agents, employees and affiliates as of the Effective Date, of and from any and all claims, losses, liabilities and causes of action of every kind and nature, whether in law or in equity, known or unknown or fixed or contingent, whether under such Employment Agreement or otherwise, that Weiss may possess as of such date. In consideration of the foregoing, Seller shall release Weiss from any and all agreements and covenants in Weiss' Employment Agreement that would restrict Weiss' or Purchaser's activities after the Effective Date.

**8.5 Audit Right.** For so long as any amount of principal or accrued interest remains outstanding under the Note, Seller shall have, at Seller's expense and with three (3) days' advance written notice, reasonable access to



the books and financial records of Purchaser, including all financial statements, financial reports and sales reports, and to the senior management of Purchaser.

**8.6 Employee Benefit Plans.** As of the Effective Date, Purchaser shall become, or appoint an authorized designee to become, the sponsor of the Employee Benefit Plans identified on Schedule 6.15 attached to this Agreement. As sponsor of the Employee Benefit Plans, the Purchaser shall appoint itself or an authorized designee as the fiduciary and the administrator of the Employee benefit Plans. The Purchaser shall assume and become responsible for the obligations under the agreements governing the Employee Benefit Plans. At the Closing, Linver shall resign as trustee of the Speakeasy, Inc. 401(k) Profit Sharing Plan and Trust, as amended and restated effective as of January 1, 2000, as further amended (the "**401(k) Plan**") and Purchaser shall execute an assumption and amendment of the 401(k) Plan and, the Speakeasy, Inc. Deferred Compensation Plan effective as of January 1, 1997. Seller and Purchaser shall execute such documents, further instruments of transfer and assignment and other papers and take such further actions as may reasonably be required to carry out the assignment and assumption of the Employee Benefit Plans and to properly establish Purchaser, or its authorized designee, as the sponsor, fiduciary and administrator of the Employee Benefit Plans in compliance with the laws and regulations governing the Employee Benefit Plans. Notwithstanding any term of this Section to the contrary, nothing herein shall be construed to relieve Seller of any liability as the sponsor, fiduciary and administrator of the Employee Benefit Plans prior to the Effective Date, including, without limitation, funding obligations relating to periods prior to the Effective Date.

**8.7 Purchase of Books.** Seller shall sell to Purchaser from time to time and Purchaser shall purchase from Seller from time to time, in accordance with the terms of this Section 8.7, all of the books titled, "Speak and Get Results" and "Good Enough Isn't" purchased by Seller prior to the date of Effective Date for purposes of distributing such books to participants in the courses offered through the Business, and vinyl course binders purchased by Seller after the Effective Date but ordered prior to the Effective Date for distribution to participants in courses offered through the Business (individually, a "**Course Item**" and, collectively, the "**Course Items**"). Purchaser shall, on or before the 15<sup>th</sup> day of the month following the end of each calendar quarter commencing on the Effective Date, pay to Seller a purchase price for the Course Items equal to the product of the number of Course Items distributed by Purchaser through the Business during the calendar quarter immediately preceding the month in which such payment is due and the purchase price paid by Seller per Course Item, until the earlier to occur of (i) the purchase by Purchaser from Seller of all of the Course Items; and (ii) December 31, 2007. In the event Purchaser has not purchased one hundred percent (100%) of the Course Items as of December 31, 2007, Purchaser shall purchase from Seller the number of remaining Course Items and, on or before January 15, 2008, pay to Seller a purchase price for the Course Items equal to the product of the number of remaining Course Items and

the purchase price paid by Seller per Course Item. Title to the Course Items shall remain in Seller unless and until any item thereof is delivered by Purchaser to a course participant in the ordinary course of business. Title shall then pass to Purchaser, and Purchaser shall then be entitled to pass title to the course participant. All Course Items will be held by Purchaser at Purchaser's principal place of business at no charge to Seller unless and until Purchaser delivers a Course Item to a course participant in the ordinary course of business or unless and until Seller determines to take possession thereof. Purchaser shall mark its books and records to indicate clearly that the Course Items held by it prior to delivery to course participants remain the sole property of Seller, shall indicate on its premises through labeling or other method approved by Seller that such inventory is the sole property of Seller, shall not reflect the Course Items as Purchaser's property on any financial statement, inventory list or other document, and shall at all times take such other steps as Seller may reasonably require to preserve and protect Seller's sole title to such Course Items, free and clear of any mortgage, pledge, claim, lien, charge, security interest or other encumbrance imposed by, through or under Purchaser. Purchaser authorizes Seller to file or cause to be filed a UCC-1 financing statement providing notice that the Course Items remain the property of Seller. Purchaser shall bear the sole risk of loss to the Course Items while in the possession of Purchaser, and Seller shall have no obligation to replace and sell any Course Item lost or destroyed while in Purchaser's possession. If at any time Purchaser shall materially breach this Agreement or be in default under the Note or Security Agreement, or shall not provide Seller on request with adequate assurances of payment for the Course Items, Seller may, in its sole discretion, require payment in advance for any and all purchases of Course Items to be distributed by Purchaser during any one calendar quarter, which advance payment arrangement shall continue until Purchaser is no longer in breach of this Agreement or in default under the Note or the Security Agreement.

## ARTICLE IX

### EMPLOYEES

**9.1 Assignment of Employment Contracts.** As of the close of business on January 5, 2004, Seller shall request that the employees of Seller execute in favor of Purchaser a consent to an assignment of their respective employment agreements with Seller ("***Consent to Assignment of Employment Agreement***"). Seller shall pay all salary, wages, compensation, and accrued benefits, including payroll taxes, vacation, sick leave, accrued vacation pay, unemployment and any other claims of Employees of the Business pertaining to the period up to and including the day before the Effective Date. Purchaser shall pay the employment-related obligations identified in the foregoing sentence thereafter.

**9.2 Compensation, Benefits, Personnel Policies.** To the extent not previously provided to Purchaser, Seller shall permit Weiss to make available a

list of Seller's employees employed in the Business and their compensation rates, length of employment and description of all benefits, which, to Seller's Knowledge, will be true and accurate.

## ARTICLE X

### INDEMNIFICATION

#### 10.1 Indemnity.

- a. Seller and Linver, jointly and severally, shall indemnify, defend and hold harmless Purchaser from and against all claims, losses, liabilities, damages, judgments, costs or expenses (including the reasonable fees and expenses of Purchaser's attorneys in any dispute or action between Purchaser and any third party) ("**Losses**") arising out of (i) any breach by Seller of any representation or warranty made by Seller in this Agreement; (ii) any breach or nonfulfillment by Seller of any agreement or covenant of Seller in this Agreement; (iii) any taxes of Seller that are the responsibility of Seller under this Agreement; (iv) except for claims or actions related to Assumed Liabilities, any claims or actions that relate to the conduct of the Business prior to the Effective Date or Seller's retained liabilities; and (v) any Environmental Claim; **provided that**, in each of the foregoing cases, Weiss did not have actual knowledge of such breach or claim as of the Effective Date or (ii) such breach or claim was not substantially caused by the malfeasance or misfeasance of Weiss.
- b. Purchaser shall indemnify, defend and hold harmless Seller from and against all Losses arising out of (i) any breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement; and (ii) any claims or actions that relate to the conduct of the Business after the Effective Date or any Assumed Liability.
- c. Purchaser shall indemnify, defend and hold harmless Linver from and against any liability for taxes incurred by Linver resulting from the structure of the transaction contemplated in this Agreement as a sale of the Assets that Linver would not have incurred if, in lieu of Seller's sale of the Assets, Linver sold to Purchaser her shares of common stock of Seller as the sole shareholder of Seller.
- d. As used in this Agreement, the term "**Environmental Claims**" shall mean any claim brought by any person or

entity under common law under any federal, state or local law, ordinance or regulation, including, but not limited to, claims for contribution, claims brought under the Environmental Laws and/or claims brought under any other federal, state or local law, statute, regulation or ordinance, the intent of which is to protect the environment or otherwise to protect the health and safety of persons, property, vegetation or wildlife.

- e. Notwithstanding the foregoing paragraphs of this Section 10.1 and except for Losses of Purchaser relating to Seller's intentional breach of a representation or warranty or a covenant in this Agreement, Seller shall not be required to indemnify Purchaser unless and until Purchaser's Losses equal or exceed \$ \_\_\_\_\_ in the aggregate, in which case Seller shall indemnify Purchaser for the entire amount of Purchaser's Losses, including, but not limited to, Losses incurred by Purchaser up to \$ \_\_\_\_\_. Further, notwithstanding any provision to the contrary in this Agreement or the Note, (i) Seller shall not be liable under this Article X for Losses in excess of a sum equal to the (x) Closing Payment, (y) any payments received by Seller from Purchaser under the Note, and (z) any non-cash offset of Losses against the outstanding balance of principal and accrued and unpaid interest under the Note. Further, the amount of any Losses of Purchaser under this Article X shall be reduced by the amount, if any, (i) received by Purchaser from any third person (including, without limitation, any insurance company or other insurance provider) in respect of the Losses suffered thereby, provided that Purchaser is under no present or future obligation to obtain a subrogation waiver from any of its insurers and that such reduction does not or would not invalidate any insurance policy covering such Losses; and (ii) the tax benefits available to Purchaser or its owners as a result of such Losses.

## 10.2 Notice and Opportunity to Defend.

- a. The Party making a claim under this Article 10 is referred to as the "**Indemnitee**," and the Party against whom such claim is asserted under this Article 10 is referred to as the "**Indemnifying Party**." All claims by any Indemnitee under this Article 10 shall be asserted and resolved as follows. Promptly after receipt by the Indemnitee of notice of any claim, including any action, proceeding or investigation (an "**Asserted Liability**") that may result in a Loss, the Indemnitee shall promptly give notice thereof (the "**Claim**

**Notice**") to the Indemnifying Party. The failure to deliver a Claim Notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the resulting delay is materially prejudicial to the defense of any claim. The Claim Notice shall describe the Asserted Liability in detail, and shall indicate the amount (estimated, if necessary) of the Loss that has been or may be suffered by the Indemnitee.

- b. The Indemnifying Party may assume and thereafter conduct the defense of any claim by a third party involving an Asserted Liability (a "**Third Party Claim**") with counsel of its choice; provided, however, that the Indemnifying Party will not enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnitee (not to be unreasonably withheld or delayed) unless the proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnitee. If the Indemnifying Party elects not to assume the defense of a Third Party Claim, in no event will the Indemnitee enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party, which shall not to be unreasonably withheld or delayed.
- c. Each Party shall cooperate in the defense of any Third Party Claim and shall use its reasonable best efforts to furnish all witnesses and testimony, records, materials and other information, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

**10.3 Rights of Offset.** If Purchaser is entitled to indemnification from Seller and Linver under this Article X after a Loss is finally determined by a court of competent jurisdiction or by settlement or compromise, Purchaser shall first offset any such Loss (or a portion thereof) in an amount not exceeding \_\_\_\_\_ dollars (\$) (the "**Offset Maximum**") against the outstanding balance under the Note to the extent thereof before Seller will have any obligation to make any payment with respect to its indemnification obligations hereunder. Seller may, subject to the Offset Maximum, at any time following receipt of a claim of Loss by Purchaser hereunder satisfy such claim, to the extent of any outstanding balance under the Note, by credit against such balance. Notwithstanding any term of this Section 10.3 to the contrary, nothing contained in this Section 10.3 shall relieve Seller or Linver of their obligation to indemnify Purchaser in accordance with this Article X.

**10.4 Exclusive Remedy.** The foregoing provisions of this Article X and any available equitable relief shall be the exclusive remedies of Purchaser with respect to any breach or default by Seller under this Agreement.

## ARTICLE XI

### BROKERS

Purchaser and Seller represent and warrant to each other that no broker or finder is entitled to any brokerage or finder's fee, commission or other remuneration from such Party based on any agreements, arrangements or undertakings made by such Party in connection with the transactions contemplated hereby. Purchaser and Seller shall indemnify, defend and hold the other harmless from and against any and all claims for brokerage or finder's fees, commissions or other remuneration brought by any person or entity claiming entitlement thereto in connection with or as a result of its dealing with Purchaser or Seller, as the case may be, in connection with the transactions contemplated by this Agreement.

## ARTICLE XII

### MISCELLANEOUS

**12.1 Expenses.** Except as otherwise expressly provided in this Agreement, each Party shall bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated in this Agreement, including all fees and expenses of agents, representatives, attorneys, and accountants.

**12.2 Arbitration.** Except with respect to any claim or action related to Seller's collection on the Note or enforcement of its security interest under the Security Agreement, any controversy, claim, or dispute arising out of or relating to the terms and conditions of this Agreement shall be settled by arbitration, before three (3) arbitrators appointed by the American Arbitration Association (the "AAA"), conducted in Atlanta, Georgia in accordance with the Commercial Arbitration Rules of the AAA then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction, and the Parties specifically consent to the jurisdiction of the Superior Court of Fulton County, Georgia for such purpose. If any such controversy, claim or dispute involves a claim for injunctive or other equitable relief, and suit, counterclaim or cross-claim for such relief is filed in a court of competent jurisdiction, the litigation shall be bifurcated to the extent feasible, to the end that all issues other than those required to be determined by the court on the petition for injunctive or equitable relief shall be determined by arbitration as required above. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought either (a) in the courts of the State of Georgia, County of Fulton,

or (b) if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Georgia, unless otherwise required by law. Each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such suit, action, or proceeding and waives any objection to venue laid therein.

**12.3 Costs and Attorney Fees.** In the event that litigation is brought as a result of a claimed breach of this Agreement, to enforce the terms of this Agreement, or with regard to any other matter concerning this Agreement, the substantially prevailing Party shall be entitled to recover from the substantially losing Party all reasonable costs and attorney fees incurred in bringing or defending such litigation.

**12.4 Notices.** All notices and communications under this Agreement between the Parties shall be in writing, and either:

- a. hand delivered;
- b. sent by telecopier (together with a copy sent by overnight delivery in accordance with c. below; or
- c. sent by a nationally recognized overnight delivery service (receipt requested).

to the addresses and telecopier numbers set forth below, or to such other address or telecopier number as a Party may designate in writing to the other Parties:

If to Purchaser:      Speakeasy Communications Consulting, LLC  
Attn: Scott Weiss  
Suite 600, Atlantic Center Plaza  
1180 West Peachtree Street  
Atlanta, GA 30309  
Telecopier No. (404)541-6994  
Telephone No. (404)541-4800

With a copy to:      Hertz, Schram & Saretsky, P.C.  
Attn: Steve J. Weiss  
1760 South Telegraph Road  
Bloomfield Hills, MI 48302  
Telecopier No. (248) 335-3346  
Telephone No. (248) 335-5000

If to Seller:          Speakeasy, Inc.  
Attn: Sandra G. Linver  
147 15<sup>th</sup> Street  
Apartment 16C

Atlanta, GA 30309

Telecopier No. (404) 892-8037

Telephone No. (404) 892-3255

With a copy to:

Kilpatrick Stockton LLP

Attn: Miles J. Alexander, Esq.

1100 Peachtree Street, Suite 2100

Atlanta, GA 30309

Telecopier No. (404) 815-6555

Telephone No. (404) 815-6500

Such notice or communication shall be deemed to have been given when:

- a. personally delivered (if hand-delivered);
- b. transmitted (if sent by telecopier), as evidenced by written telecopier confirmation receipt; or
- c. the earlier of (a) actual receipt or (b) the next business day after delivery to the overnight delivery service, as the case may be.

**12.5 Entire Agreement and Modification.** When executed and delivered, this Agreement (including the attached exhibits, schedules, and all other documents and instruments referred to in this Agreement or prepared or executed by the Parties in connection with this Agreement) will constitute the entire contract and the complete and conclusive understanding between the Parties with regard to the subject matter hereof. There are no oral or other agreements or understandings affecting this Agreement. This Agreement supersedes and cancels all previous discussions, negotiations, agreements, and commitments, oral and written, relating to the subject matter hereof. In entering into this Agreement, the Parties acknowledge, represent and warrant that they are relying upon no statement, representation, warranty, covenant, or agreement of any kind by any Party or person whomsoever, except as expressly set forth in this Agreement. This Agreement may not be amended, waived or discharged except by an instrument in writing signed by the Party against whom enforcement is sought.

**12.6 Additional Transfer Documents.** The Parties, in connection with the transfer of the Assets, have executed and delivered or will execute and deliver in addition to the General Assignment and Assumption of Contracts a bill of sale, and certain additional assignment and assumption agreements and other agreements, documents and instruments more particularly to effect the sale, transfer, conveyance and assignment to Purchaser of the specific assets and properties specified in such agreements, documents and instruments (such agreements, documents and instruments, collectively, the "**Additional Transfer**



Documents”), The Additional Transfer Documents include, without limitation, the lease assignment and assumption documents referenced in Sections 5.4b and 5.4c. As between the Parties, and without regard to any inconsistent rights of a landlord or other third party therein, (i) the Additional Transfer Documents will be effective as of the Effective Date, and (ii) unless otherwise expressly provided herein or therein, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Additional Transfer Documents, this Agreement will govern. WITHOUT LIMITING THE FOREGOING, NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN ADDITION TO THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, ARE MADE BY EITHER PARTY TO THE OTHER PURSUANT TO OR BY VIRTUE OF THE DELIVERY OF ANY ADDITIONAL TRANSFER DOCUMENT OR BASED ON ANY FAILURE OF ANY ADDITIONAL TRANSFER DOCUMENT EXPRESSLY TO DISCLAIM ANY REPRESENTATION OR WARRANTY, AND THE SAME ARE HEREBY DISCLAIMED.

**12.7 Waiver.** No delay or omission to exercise any right, power or remedy accruing to any Party upon any breach or default of the other Party under this Agreement shall impair any such right, power or remedy of any such Party; nor shall it be construed to be a waiver of any such breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement must be made in writing, signed by the Party against whom such waiver, consent or approval is sought to be enforced, and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any Party, shall be cumulative and not alternative.

**12.8 Assignment, Successors and Assigns.** Until such time as the Note has been paid in full, Purchaser may not assign any or all of Purchaser's rights and obligations under this Agreement without Seller's written consent. Except as otherwise provided in this Section 12.7, Seller may not assign any of Seller's rights and obligations under this Agreement (including the attached exhibits, schedules, and all other documents and instruments referred to in this Agreement prepared or executed by the Parties in connection with this Agreement), except that Seller may assign any rights or obligations to its shareholders. Notwithstanding the terms of this Section 12.7 to the contrary, Seller may assign any of Seller's right and obligations under the Note and the related Security Agreement to a third party; *provided, however*, such third party or any affiliate of such party is not engaged in any activities that are competitive with the Business. The provisions of this Agreement shall inure to the benefit of, and be binding in all respects upon, the Parties, their successors, legal representatives, heirs, and assigns irrespective of whether such person shall have become a party to this Agreement or agreed to join in or be bound by the terms of this Agreement. Nothing expressed or referred to in this Agreement

shall be construed to give any other person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement is for the sole and exclusive benefit of the Parties and their successors, legal representatives, heirs, and permitted assigns.

**12.9 Confidentiality.** Each Party shall maintain in complete and strict confidence, and will likewise cause each of its respective shareholders, directors, members, managers, officers, partners, employees, attorneys, accountants, agents, advisors, consultants, heirs, successors and assigns (collectively referred to as a Party's "**Agents**") to maintain in complete and strict confidence the Confidential Information (defined below), and shall disclose, divulge or permit access to such persons strictly on an absolute "need-to-know" basis, (a) the material financial terms of this Agreement, and (b) all financial information pertaining to the business affairs of the other Party or such Party's affiliates (collectively, the "**Confidential Information**"), unless:

- a. the Confidential Information is already known by such Party from other non-confidential sources or through other non-confidential means;
- b. the Confidential Information is generally known to the public or is otherwise in the public domain;
- c. the Confidential Information becomes publicly available through no violation of the duty of confidentiality imposed upon such Party or its Agents by this Agreement or otherwise; or
- d. the furnishing or use of the Confidential Information is necessary or appropriate in connection with legal, administrative, or other governmental proceedings or filings or to perform obligations hereunder.

If demand is made upon any Party or any of its Agents for disclosure of any Confidential Information, or if a Party or any of its Agents otherwise contemplates disclosing any Confidential Information, such Party shall, if possible, at least seventy-two (72) hours in advance of making any such disclosure and, if circumstances do not permit such advance notice, as promptly as possible, provide the other Party written notice of its proposed, intended or anticipated disclosure of Confidential Information.

**12.10 Governing Law.** This Agreement shall be governed by, and enforced and construed in accordance with, the laws of the State of Georgia, irrespective of its conflict of laws principles.

**12.11 Severability.** The provisions of this Agreement, except as otherwise expressly provided to the contrary herein, are severable. If any section

or provision hereof shall be held invalid or unenforceable by a court of competent jurisdiction, arbitrator, or other person, such determination shall not affect the remaining provisions of this Agreement, and all such provisions shall be given full force and effect separately from the invalid or unenforceable section or provision.

**12.12 Document Preparation.** Each of the Parties has joined in and contributed to the drafting of this Agreement and each Party agrees that there shall be no presumption favoring or burdening any Party based upon draftsmanship.

**12.13 Section Headings and Construction.** The headings of sections in this Agreement are provided for convenience only and shall not affect the construction or interpretation of any provision hereof. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

**12.14 Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the absolute essence.

**12.15 Survival.** The representations, warranties, covenants, obligations and agreements made in this Agreement shall survive the Closing Date for a period of three (3) years. Nothing in this Section shall affect the Note, the Security Agreement, the Consulting Agreement of even date between Linver and Purchaser, or obligations under any other separate agreement or instrument, or any obligations under this Agreement relating to the Note or Security Agreement (including, without limitation, Sections 3.4 and 8.5 hereof) or which by their express terms provide for performance after (3) years (including Section 8.7 hereof).

**12.16 Counterparts; Telecopied Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original copy of this Agreement and all of which together shall be deemed to constitute a single instrument. Any signature to this Agreement delivered by a Party by facsimile transmission shall be deemed to be an original signature hereto.

**12.17 NO WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SALE HEREUNDER IS "AS IS" AND "WHERE IS," AND, EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, NATURE, OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY ASSET FOR A PARTICULAR PURPOSE, AND SELLER HEREBY EXPRESSLY DISCLAIMS THE SAME.

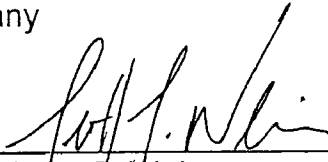
**[Signature Page Follows]**

Each Party has caused this Agreement to be executed on the date set forth set forth below.

**"Purchaser"**

Speakeasy Communications Consulting, LLC, a Michigan limited liability company

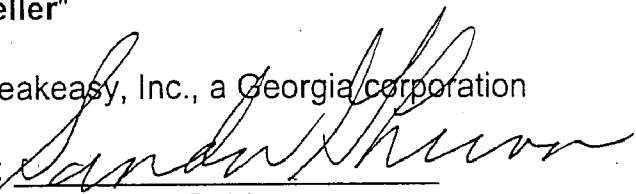
Date: January 13, 2004

By:   
Scott S. Weiss  
Its: Manager

**"Seller"**

Speakeasy, Inc., a Georgia corporation

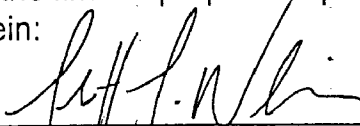
Date: January 13, 2004

By:   
Sandra G. Linver  
Its: President and Sole Shareholder

**"Weiss"**

For the limited purposes specified herein:

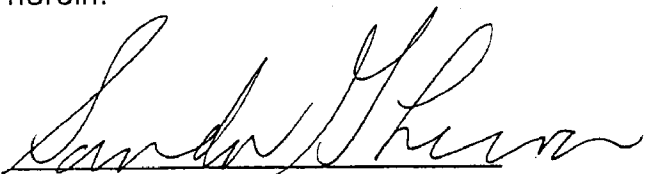
Date: January 13, 2004

  
Scott S. Weiss

**"Linver"**

For the limited purposes specified herein:

Date: January 13, 2004

  
Sandra G. Linver

**AGREEMENT TO PURCHASE ASSETS**

**BETWEEN**

**SPEAKEASY COMMUNICATIONS CONSULTING, LLC,  
A MICHIGAN LIMITED  
LIABILITY COMPANY**

**AND**

**SPEAKEASY, INC., A GEORGIA CORPORATION**