

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

CLOUDEEVA, INC., *et al.*<sup>1</sup>,  
  
Debtors.

Chapter 11

Case No. 14-24874 (KCF)  
(Jointly Administered)

**Hearing Date: March 1, 2016 @ 10:00 am**

**NOTICE OF MOTION OF FIRST TEK, INC. TO COMPEL ENFORCEMENT OF SALE  
ORDER AND RELEASE OF FUNDS HELD BY CHAPTER 11 TRUSTEE  
AND FOR ENFORCEMENT OF EXPENSES IN CONNECTION THEREWITH**

TO: PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that Archer & Greiner, A Professional Corporation, attorneys for First Tek, Inc. ("FTI"), has filed papers with the court for entry of an Order compelling the enforcement of sale order and release of funds held by Chapter 11 Trustee and for enforcement of expenses in connection with this motion (the "Motion"). Your rights might be affected. You should read these papers carefully and discuss them with your attorney, if you have one in the bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

FTI shall rely upon the attached Motion. A Certificate of Service and a proposed form of Order are also submitted.

<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are (i) Cloudeeva, Inc., a Delaware corporation (Case No. 14-24874-KCF); and (ii) Cloudeeva, Inc., a Florida corporation (Case No. 14-24875-KCF).

If you do not want the Court to enter an Order granting the relief requested in the Motion, or if you want the court to consider your views on the Objection, then on or before **February 23, 2015**, you or your attorney must file with the Court a written request for a hearing or response or answer explaining your position at the:

United States Bankruptcy Court  
Clarkson S. Fisher US Courthouse  
402 East State Street  
Trenton, N.J. 08608

If you mail your request/response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to: Jerrold S. Kulback, Esquire, Attorneys for FTI, at Archer & Greiner, A Professional Corporation, One Liberty Place, 32<sup>nd</sup> Floor, 1650 Market Street, Philadelphia, PA 19103-7393 as well as to all parties set forth on the attached Service List.

You must attend the hearing scheduled to be held on **Tuesday, March 1, 2016, at 10:00 A.M.** in the United States Bankruptcy Court, District of New Jersey, 402 East State Street, Trenton, New Jersey 08608. If you do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting Motion.

**Statement of Non-Necessity of Brief.** Movant certifies pursuant to D.N.J. LBR 9013-2 that the within Motion involves common questions of law and fact and does not involve complex or novel issues such as to require the submission of a legal brief.

ARCHER & GREINER  
A Professional Corporation  
Attorneys for First Tek, Inc.

Dated: February 5, 2016

By: /s/ Jerrold S. Kulback.  
Jerrold S. Kulback

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UNITED STATES BANKRUPTCY COURT  
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Chapter 11

Case No. 14-24874 (KCF)  
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**Hearing Date: March 1, 2016 @ 10:00 am**

**MOTION OF FIRST TEK, INC. TO COMPEL ENFORCEMENT OF SALE  
ORDER AND RELEASE OF FUNDS HELD BY CHAPTER 11 TRUSTEE  
AND FOR ENFORCEMENT EXPENSES IN CONNECTION THEREWITH**

First Tek, Inc. (“FTI”), by and through its undersigned counsel, hereby moves this Honorable Court (this “Motion”) for the entry of an order compelling (i) the enforcement of that certain Order Confirming the Asset Purchase Agreement and Related Auction and Authorizing and Approving the Sale of Purchased Assets to First Tek, Inc. Free and Clear of Liens and Other Interests and Assumption and Assignment of Executory Contracts and Unexpired Leases dated April 9, 2015 [*Docket Ref. No. 552*] (the “Sale Order”) and compliance therewith by the Chapter 11 Trustee; (ii) the release of certain funds related thereto; and (iii) an award of enforcement expenses (attorneys’ fees and costs), and in support thereof, respectfully aver as follows:

<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are (i) Cloudeeva, Inc., a Delaware corporation (Case No. 14-24874-KCF); and (ii) Cloudeeva, Inc., a Florida corporation (Case No. 14-24875-KCF).

**I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

1. On July 21, 2014 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”).

2. On August 13, 2014, the Bankruptcy Court entered an order consolidating the cases for procedural purposes only to be jointly administered under Lead Case No. 14-24874-KCF (the “Bankruptcy Case”).

3. On December 1, 2014, the Bankruptcy Court entered an order approving the appointment of Stephen Gray as Chapter 11 Trustee for bankruptcy estates (the “Estates”) of the Debtors.

4. On February 10, 2015, the Bankruptcy Court entered an order removing Stephen Gray as Chapter 11 Trustee and approving the appointment of Richard B. Honig (the “Trustee”) as successor Chapter 11 Trustee for Debtors’ Estates.

5. On or about that March 9, 2015, FTI and the Trustee entered into that certain Asset Purchase Agreement dated March 9, 2015 (the “APA”) by and between FTI, as buyer, and the Trustee as seller, of substantially all of the assets of the Debtors. A copy of the APA is annexed hereto as Exhibit “A.”

6. On April 9, 2015, the Bankruptcy Court entered the Sale Order, authorizing and approving, *inter alia*, the sale of the Purchased Assets (as such term is defined in the APA) to FTI free and clear of liens, claims, and other interests pursuant to sections 105, 363, and 365 of the Bankruptcy Code (the “Asset Sale”).

7. Closing on the Asset Sale (the “Closing”) occurred on or about April 10, 2015 (the “Closing Date”), pursuant to, among other things, that certain Bill of Sale, Assignment &

Assumption Agreement dated April 10, 2015 (the “Bill of Sale”) by and between FTI and the Trustee (collectively, the APA, Bill of Sale, and all other related sale documents, together with all amendments, supplements, and modifications thereto may be referred to herein as the “Sale Documents”). A copy of the Bill of Sale is annexed hereto as Exhibit “B.”

8. By letter dated January 20, 2016 (the “Demand Letter”), counsel for FTI made demand upon the Trustee for the release of certain sums in connection with the Asset Sale, totaling \$49,675.59 (the “Demand Amount”), as more fully set forth in the Demand Letter. A copy of the Demand Letter is annexed hereto as Exhibit “C.”

9. Despite demand, the Trustee has failed and refused to comply with the terms and conditions of the Sale Documents and has not released the Demand Amount to FTI.

10. The Bankruptcy Court specifically retained jurisdiction with respect to all disputes arising out of the Sale Documents. See, APA, § 12.9; Sale Order, ¶ 18.

## **II. RELIEF REQUESTED AND BASIS THEREFOR**

11. By this Motion, FTI seeks the Bankruptcy Court’s entry of an order compelling (i) the enforcement of the Sale Order; (ii) the immediate release of the Demand Amount by the Trustee to FTI; and (iii) an award of enforcement expenses (attorneys’ fees and costs) in connection with FTI’s efforts to obtain the Demand Amount from the Trustee.

12. Pursuant to the Sale Documents, FTI acquired, among other Purchased Assets, all of the Debtors’ “Accounts Receivable” (as such term is defined in the APA) as of the Closing Date, subject to certain exclusions not applicable here. See, APA, § 2.1(g); Bill of Sale, § A.4.

13. Among the Accounts Receivable acquired by FTI were (i) a certain receivable due and owing by Randstad in the amount of \$2,760.00; and (ii) a certain receivable due and owing by Pactera Technologies, Inc. in the amount of \$5,600.00 (collectively, the “Trade Receivables”).



14. The Trade Receivables were paid by Randstad and Pactera Technologies, Inc., respectively, some time in either April or May 2015; however, the Trade Receivables were collected by the Trustee and not by FTI.

15. At the Closing, First Tek issued Check #373 in the amount of \$140,127.82 (the “Apportionment Check”) to the Trustee, pursuant to that certain mutually executed apportionment schedule (the “Apportionment Schedule”). The Apportionment Schedule and the Apportionment Check included two-thirds of the total April 2015 employee health insurance premium from United Healthcare ( $\$72,381.29 \times 2/3 = \$48,254.19$ ). The two-thirds reflects FTI’s ownership period in April post-Closing. Copies of the Apportionment Check and apportionment schedule are annexed hereto as Exhibit “D.”

16. In May 2015, the Debtors processed their final payroll with ADP, and in that payroll processing period the Debtors paid their former employees through the Closing Date (April 10, 2015), their final date as “Cloudeeva” employees. As part of that final payroll – post-Closing and *long after having been reimbursed the \$48,254.19 by FTI apportioned to the FTI period as employer for April 11 through April 30* – the Debtors nevertheless deducted, withheld, and retained from the employees’ net pay a full month’s worth of health insurance premiums, representing the employees’ full monthly contribution, in the amount of \$41,315.59 (the “Payroll Receivable”).

17. Collectively, the Trade Receivables (totaling \$8,360.00) and the Payroll Receivable (totaling \$41,315.59) comprise the total Demand Amount (totaling \$49,675.59).

18. Based on the timing and nature of the Trade Receivables and the Payroll Receivable, those sums are the property of FTI and the Trustee has wrongfully refused to release said sums to FTI. The Trustee’s continued refusal to release these monies constitutes a continuing violation of the Sale Documents.

19. The Sale Documents further provide for reimbursement of “Enforcement Expenses” in connection with any party successfully compelling enforcement of the terms and conditions of Sale Documents or the rights of the parties thereto. Specifically, Section 12.14 of the APA provides:

Section 12.14            Enforcement Expenses

Each Party shall pay its own expenses, including attorneys’ fees, in connection with this Agreement and the performance of their respective obligations hereunder, provided, however, that in the event any suit, action, or proceeding is brought to construe or enforce the terms and conditions of this Agreement or the rights of the Parties hereunder, the losing Party shall pay to the prevailing Party all court costs and attorneys’ fees and costs incurred in such suit, action, or proceeding to be fixed in amount by the Bankruptcy Court. Attorneys’ fees and costs incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. This Section 12.14 is intended to be severable from the other provisions of this Agreement and to survive the Closing and any judgment and, to the maximum extent permitted by law, shall not be deemed merged into any such judgment.

See, APA, § 12.14.

20. FTI thus seeks an award of Enforcement Expenses against the Trustee in connection with its prosecution of this Motion.<sup>2</sup>

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<sup>2</sup> Counsel for FTI will submit to the Bankruptcy Court an Affidavit of Services in such form and within such time as the Bankruptcy Court may require.

### **III. CONCLUSION**

21. Accordingly, FTI seeks the Bankruptcy Court's entry of an order compelling (i) the enforcement of the Sale Order; (ii) the immediate release of the Demand Amount by the Trustee to FTI; and (iii) an award of Enforcement Expenses to FTI in connection with this Motion.

Dated: February 5, 2016

ARCHER & GREINER  
A Professional Corporation  
*Attorneys for First Tek, Inc.*

By: /s/ Jerrold S. Kulback.  
Jerrold S. Kulback

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**ASSET PURCHASE AGREEMENT**

**Between**

**First Tek, Inc.,**

**as Buyer**

**and**

**Richard B. Honig, as Chapter 11 Trustee for the bankruptcy estate of  
Cloudeeva, Inc.,**

**as Seller**

**Dated as of March 9, 2015**

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**Schedules**

Schedule 2.1(a)	Assumed Real Property Leases
Schedule 2.1(b)	Assumed Contracts
Schedule 2.1(c)	Assumed Equipment Leases
Schedule 2.1(d)	Acquired Intellectual Property
Schedule 2.3	Certain Excluded Assets
Schedule 3.3	Allocation of Purchase Price
Schedule 5.3	Litigation
Schedule 5.4	Permitted Liens and Exceptions

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2015, by and between First Tek, Inc., a New Jersey corporation with an address at 1551 S. Washington Ave., Ste. 402A, Piscataway, NJ 08854 ("Buyer") and Richard B. Honig ("Seller"), as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc., a Delaware corporation ("Debtor"). Seller and Buyer are individually referred to herein as a "Party", and collectively they are referred to as the "Parties". Capitalized terms are defined in Section 1.1 below.

WHEREAS, Debtor operates a technology staffing and solutions business (the "Business");

WHEREAS, on July 21, 2014 Debtor filed with the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, §§ 101-1532 (as amended, the "Bankruptcy Code"), Case No. 14-24874 (KCF) (the "Chapter 11 Case"). Seller's Chapter 11 Case is being jointly-administered with the Chapter 11 case filed by its parent company, Cloudeeva, Inc., a Florida Corporation, Case No. 14-24875, for which Seller also serves as Trustee;

WHEREAS, on or about November 18, 2014, the Bankruptcy Court ordered that a Chapter 11 Trustee be appointed to oversee the management and affairs of the Debtor;

WHEREAS, on or about November 26, 2014, Stephen Gray was appointed and duly qualified as Chapter 11 Trustee and served as Chapter 11 Trustee for the Debtor until the appointment of Seller as Successor Trustee on February 10, 2015;

WHEREAS, Seller intends to sell substantially all of Debtor's operating assets used or usable in connection with the Business, which will be subject to approval of the Bankruptcy Court in the Chapter 11 Case;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, upon the terms and subject to the conditions set forth in this Agreement and in accordance with Sections 105, 363, 365 and other provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, the Purchased Assets in exchange for the payment to Seller of the Purchase Price and the assumption of the Buyer of any Assumed Liabilities;

WHEREAS, the Purchased Assets are assets of Seller, which will be sold, assigned, transferred, conveyed and delivered at the Closing by Seller to Buyer free and clear of all claims, liens, encumbrances, and other interests (other than Permitted Liens and Exceptions) pursuant to the Sale Order; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order to be entered in the Chapter 11 Case pursuant Section 363(f) and other applicable provisions of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1 Definition of Terms. The terms defined in this Section 1.1, whenever used in this Agreement, shall have the respective meanings indicated below.

"Accounts Receivable" shall have the meaning ascribed to such term in Section 2.1(g).

"Acquired Customer Lists" shall have the meaning ascribed to such term in Section 2.1(k).

"Acquired Equipment" shall have the meaning ascribed to such term in Section 2.1(d).

"Acquired Intellectual Property" shall have the meaning ascribed to such term in Section 2.1(i).

"Acquired Permits" shall have the meaning ascribed to such term in Section 2.1(e).

"Acquired Real Property" shall mean Seller's interests in real property that are the subject of the Assumed Real Property Leases.

"Acquired Work in Process" shall have the meaning ascribed to such term in Section 2.1(f).

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such specified Person.

"Agreement" has the meaning set forth in the preamble above, and includes all Exhibits and Schedules hereto.

"Allocation Schedule" has the meaning set forth in Section 3.3.

"Applicable Law" means all applicable (i) foreign, federal, state and local laws, statutes, rules, regulations, codes and ordinances, (ii) Governmental Approvals, and (iii) orders, decisions, injunctions, judgments, awards and decrees of any Governmental Authority.

"Assumed Contracts" has the meaning set forth in Section 2.1(b).

"Assumed Equipment Leases" has the meaning set forth in Section 2.1(c).

"Assumed Liabilities" has the meaning set forth in Section 2.4.

"Assumed Real Property Leases" has the meaning set forth in Section 2.1(a).

"Auction" shall have the meaning defined in Section 10.4(b).

"Avoidance Actions" means any and all causes of action of Seller pursuant to Sections 544, 545, 547, 548, 549, and 553(b) of the Bankruptcy Code and all proceeds therefrom.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bidding Procedures Order" means the order to be entered by the Bankruptcy Court in the Chapter 11 Case approving the procedures by which higher or better offers for the Purchased Assets may be considered by the Bankruptcy Court and Seller, as such order may be amended from time to time"

"Bill of Sale and Assumption and Assignment Agreement" has the meaning set forth in Section 4.2.

"Business" has the meaning set forth in the Recitals.



"Business Days" means any day other than Saturday, Sunday or a day on which banking institutions in New Jersey are authorized or obligated by law or regulation to be closed.

"Buyer" has the meaning set forth in the Recitals.

"Cause" shall mean (i) an employee's conviction of any crime that has, or could reasonably be expected to result in, a material adverse impact on the performance of such employee's duties to his/her employer, or otherwise has, or could reasonably be expected to result in, a material adverse impact to the business or reputation of the employer; (ii) the willful or intentional misconduct of the employee, in connection with his/her employment, that has, or could reasonably be expected to result in, material injury to the business or reputation of the employer, including, without limitation, willful act(s) of fraud, embezzlement or misappropriation of the business or assets of the employer; or (iii) willful neglect in the performance of the employee's duties or willful or repeated failure or refusal to perform such duties.

"Chapter 11 Case" has the meaning set forth in the Recitals.

"Claim" has the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, *inter alia*, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

"Closing" has the meaning set forth in Section 4.1.

"Closing Date" has the meaning set forth in Section 4.1(a).

"Closing Time" has the meaning set forth in Section 4.1(a).

"Consent" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing by or with, or report or notice to, any Person.

"Contracts" shall mean all oral or written contracts to which Seller is a party that are used or useful in the conduct of the Business, including all agreements for the sale, purchase, lease, and/or use of goods or services.

"Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of securities, partnership or other ownership interests, by contract or credit arrangement, as trustee or executor, or otherwise.

"Copyrights" shall have the meaning ascribed to it in the definition of the term Intellectual Property.

"Cure Amounts" means the Real Property Cure Amounts (if applicable) and the cure, compensation and reinstatement costs and expenses and any other amounts which must be paid and other obligations that must be satisfied relating to the assumption and assignment of the Assumed Contracts, the Assumed Equipment Leases or, to the extent applicable, the Acquired Intellectual Property pursuant to, and as required by, Section 365 of the Bankruptcy Code or otherwise hereunder (including, without limitation, those cure amounts set forth on Schedule 2.1(b)).

"Customer Lists" means all proprietary lists of customers or other parties owned and maintained by Seller and used in Seller's business, with all such lists subject to the privacy policies of Seller relating to the information in such lists as set forth in the confidentiality agreement dated February 2, 2015 to which Seller and Buyer are bound ("Confidentiality Agreement").

"Deposit" means a deposit in the amount of ten (10%) percent of the Purchase Price (but not less than Five Hundred Thousand and no/100 Dollars [\$500,000.00]) payable to Seller submitted by Buyer upon execution and delivery of this Agreement plus such additional amount, if any, as shall be required to be delivered by Buyer in accordance with the terms of Section 3.2.

"Equipment" shall have the meaning ascribed to such term in Section 2.1(d).

"Excluded Assets" has the meaning set forth in Section 2.3.

"Excluded Claims" has the meaning set forth in Section 2.3(h).

"Excluded Contract" means all Contracts except for the Assumed Contracts.

"Excluded Customer Lists" has the meaning set forth in Section 2.3(o).

"Excluded Equipment" has the meaning set forth in Section 2.3(c).

"Excluded Intellectual Property" has the meaning set forth in Section 2.3(n).

"Excluded Liabilities" has the meaning set forth in Section 2.5.

"Excluded Permits" has the meaning set forth in Section 2.3(d).

"Final Order" means an Order of the Bankruptcy Court or a court of competent jurisdiction as to which: (i) no request for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Bankruptcy Court or court of competent jurisdiction and the time for filing any such petition or protest is passed; (iii) the Bankruptcy Court or court of competent jurisdiction does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; (iv) other than with respect to the Sale Order, the action or order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof; and (v) with respect to the Sale Order, the action or order is not then under judicial review for a challenge regarding Buyer's status as a purchaser in good faith pursuant to Section 363(m) of the Bankruptcy Code, there is no notice of appeal or other application for judicial review pending regarding Buyer's status as a purchaser in good faith pursuant to Section 363(m) of the Bankruptcy Code, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

"Governmental Approval" means any Consent of any Governmental Authority.

"Governmental Authority" means any federal, state, local, domestic, foreign or supranational governmental, regulatory, or self-regulatory authority, agency, court, tribunal, commission or other governmental, regulatory or self-regulatory entity, or any other political subdivision thereof, or any agency or instrumentality of any such governmental or political subdivision, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Insurance Policies" means those policies of insurance maintained by or for the benefit of Seller, and all claims, returned premiums and other proceeds under or from such insurance policies.

"Intellectual Property" means all intellectual property rights owned or licensed by Seller in connection with the Business and arising from or in respect of the following: (i) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Websites and Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, all applications, registrations and renewals thereof, and material unregistered trademarks (collectively, "Trademarks"), (ii) copyrights and registrations and applications therefor, works of authorship, and mask work rights and, material unregistered copyrights, in each case used primarily in connection with the Business, (collectively, "Copyrights"), and (iii) all Software and Technology of Seller used in connection with the Business.

"IRC" means the Internal Revenue Code of 1986, as amended.

"Knowledge of Seller" (and words or phrases of similar import) means the actual knowledge of Richard B. Honig, Chapter 11 Trustee for the bankruptcy estate of Debtor, based upon a review of Debtor's books and records.

"Lien" means any mortgage, pledge, hypothecation, security interest, encumbrance, lease, sublease, license, occupancy agreement, easement, encroachment, title defect, title retention agreement or lien.

"Material Adverse Effect" means a state of facts, event, change or effect to the Business, that results in a material adverse effect on the Business, taken as a whole, but excludes any state of facts, event, change or effect caused by states of facts, events, changes or developments relating to (i) changes or conditions affecting the industry in general; (ii) changes in economic, regulatory or political conditions generally; (iii) any act(s) of war or of terrorism; or (iv) changes resulting from any motion, application, proceeding or order filed relating to, the Chapter 11 Case.

"Notice" has the meaning set forth in Section 12.5.

"Order" shall mean any judgment, order, injunction, writ, ruling, verdict, decree, stipulation or award of the Bankruptcy Court or other Governmental Authority.

"Outside Date" has the meaning set forth in Section 4.1(a).

"Party" and "Parties" have the meanings set forth in the preamble above.

"Permits" shall have the meaning ascribed to such term in Section 2.1(e).

"Permitted Exceptions" means, with respect to any property or assets of Seller, whether owned as of the date hereof or hereafter (i) all defects, exceptions, restrictions, easements, rights-of-way or encumbrances of record; (ii) any other Liens or imperfections of title that do not materially detract from the value of or materially impair the use of the Purchased Assets for their intended purpose; (iii) local, county, state and federal laws, ordinances or governmental regulations now or hereafter in effect relating to the Purchased Assets or the Business being sold; (iv) violations of laws, regulations, ordinances, orders or requirements, if any, arising out of the adoption, promulgation, repeal, modification or reinterpretation of any law, rule, regulation, ordinance or order of any federal, state, county or local government, governmental agency, court, commission, department or other such entity which occurs subsequent to the Closing Date; (v) Liens, title exceptions or imperfections of title caused by or resulting from the acts of Buyer or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees; and (vi) encroachments, protrusions, overlaps, boundary line disputes, rights-of-way, street line changes and any other matters which would be disclosed by an accurate survey and inspection of the Purchased Assets and that do not materially detract from the value of or materially impair the use of the Purchased Assets for their intended purpose.

"Person" means any natural person, firm, partnership, association, corporation, company, limited liability company, trust, business trust, Governmental Authority or other entity.

"Petition Date" means July 21, 2014, the date of commencement of the Chapter 11 Case.

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

"Purchased Assets" has the meaning set forth in Section 2.1.

"Real Property" means the parcel(s) of real property which are the subject of Real Property Leases of Debtor, together with all fixtures, buildings, and appurtenances.

"Real Property Cure Amounts" means all amounts required to be paid, including, without limitation any delinquent and unpaid rent and real estate taxes owing by Debtor, in order to have Debtor's interests in the Assumed Real Property Leases assumed and assigned pursuant to Section 365 of the Bankruptcy Code.

"Real Property Leases" means all leases of Real Property under which Debtor is a lessor, lessee, sub-lessor or sub-lessee.

"Real Property Lease Assumption and Assignment Agreements" shall have the meaning ascribed to such term in Section 4.2(e).

"Reimbursement Amount" shall have the meaning defined in Section 10.4(c).

"Representatives" with respect to a Party, means such Party's directors, officers, employees, accountants, counsel, consultants, lenders and agents.

"Sale Hearing" means the hearing conducted by the Bankruptcy Court for purposes of approving and confirming the sale of the Purchased Assets in accordance with the Bidding Procedures Order.

"Sale Order" means an order of the Bankruptcy Court, in form, content, and detail reasonably acceptable to Seller, approving this Agreement and the consummation of the transactions contemplated hereby, including the assumption and assignment of the Assumed Contracts.

"Seller" has the meaning set forth in the preamble above.

"Software" means, except to the extent generally available for purchase from a third Person, any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all data, collections of data, whether machine readable or otherwise, (iii) descriptions, flow charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (iv) all documentation including user manuals and other training documentation related to any of the foregoing.

"Taxes" means any federal, state, provincial, local or foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the IRC), real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care, withholding, estimated or other similar tax,

duty or other governmental charge or assessment or deficiencies thereof, and including any interest or penalties thereon or additions thereto.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Technology" means, collectively, all designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used or useful in the Business, other than any in the form of Software.

"Termination Fee" shall have the meaning defined in Section 10.4(b).

"Trademarks" shall have the meaning ascribed to such term in the definition of Intellectual Property.

"Transaction Taxes" has the meaning set forth in Section 8.1.

"UCC" means the Uniform Commercial Code as the same may, from to time, be in effect in the State of New Jersey.

"Website" shall mean (i) the websites or domains currently located at the following URLs:

CLOUDEEVA.NET

CLOUDEEVA.COM

CLOUDEEVA.US

CLOUDEEVA.MOBI

CLOUDEEVA.INFO

CLOUDEEVA.BIZ

CLOUDEEVA.CO

CLOUDEEVA.ORG

CLOUDEEVA.ME; and

(ii) all other websites owned or controlled by Debtor, and all Content and pages contained within each of those websites, hosted anywhere in the world, and (iii) all website user information and data collected by Debtor, including email addresses, website logs, clickstream data and cookies, but, in each case, excluding freely available graphic or text content, such as clip art or graphic images licensed from commercial media vendors. For each Website, the Content and pages shall include all computer files and documentation for the current version of the Website and all archived Content and pages in Debtor's possession or control. As used herein, the term "Content" means any literary, audio, video, and other information, including editorial content, data, animation, graphics, photographs and artwork, and combinations of any or all of the foregoing, in any tangible or digital formats.

"Work in Process" means services performed by Debtor for its customers prior to Closing, but which have not been invoiced as of the Closing Date.

#### Section 1.2 Construction

The Parties acknowledge that they and their counsel have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall be employed in the interpretation hereof, and this Agreement or any amendment hereof shall be construed as if drafted jointly by the Parties. Any references to any agreement defined herein shall be deemed to include reference to any amendment, restatement or other modification made thereto in accordance with the terms thereof. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Words (including capitalized terms defined herein) in the singular shall be held to include the plural and vice versa as the context requires. All references herein to a "Section", "Article", "Exhibit" or "Schedule" are to a respective section, article, exhibit or schedule of or to this Agreement, unless otherwise specified. The words "herein", "hereinafter", "hereunder" and words of similar import used in this Agreement shall, unless otherwise stated, refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to "\$" in this Agreement and the other agreements contemplated hereby



shall refer to United States dollars (unless otherwise specified expressly). References to any gender also are intended to include any other gender. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation."

## **ARTICLE II**

### **SALE AND PURCHASE OF ASSETS**

#### **Section 2.1 Purchased Assets**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, assign, convey, deliver and otherwise transfer, or cause to be sold, assigned, conveyed, delivered and otherwise transferred, to Buyer, and Buyer shall purchase and accept from Seller all right, title and interest of Seller in and to all of Debtor's assets relating to the Business described below in this Section, whether now existing or hereafter acquired (other than the Excluded Assets) (collectively, the "Purchased Assets"). (Buyer may elect before the Closing not to including any asset in the Purchase Assets, and any such assets will not be transferred to Buyer at the Closing, provided that any such election by Buyer shall not reduce or otherwise affect the Purchase Price or any other terms of this Agreement.)

(a) if Buyer shall assume the real property leases, the real property leases and subleases set forth on Schedule 2.1(a) and related leasehold improvements (the "Assumed Real Property Leases");

(b) the executory contracts and leases of Debtor set forth on Schedule 2.1(b) (the "Assumed Contracts");

(c) if applicable, the equipment leases (the "Equipment Leases") set forth on Schedule 2.1(c) (the "Assumed Equipment Leases");

(d) if applicable, all of Debtor's furniture, fixtures, equipment, supplies and other tangible personal property, together with all warranties, licenses, releases, service agreements and contractual commitments, if any, express or implied, existing for the benefit of Debtor in connection therewith (collectively, the "Equipment"), but specifically excluding any Excluded Equipment (the "Acquired Equipment");

(e) all licenses, permits, franchises and other authorizations of any Governmental Authority relating to the Purchased Assets, and all pending applications therefor (collectively, the "Permits"), but specifically excluding any

Excluded Permits (the "Acquired Permits"), to the full extent, if any, that such Acquired Permits are transferable or assignable;

(f) all of Debtor's Work in Process as of the Closing Date (the "Acquired Work in Process");

(g) all of Debtor's accounts receivable and all other "Accounts" (as defined in the UCC) of Seller, including any amounts due with respect to employee advances ("Accounts Receivable"), as of the Closing Date, but specifically excluding Avoidance Actions, Excluded Claims and other Excluded Assets described herein;

(h) to the extent the transfer to Buyer is not prohibited by Law (giving effect to any obtained Orders or consents to transfer), copies or originals of all books, records, files or papers of Debtor, whether in hard copy or electronic format, relating to the Purchased Assets or to the on-going operation of the Business, including, sales and promotional literature, manuals and data, sales and purchase correspondence, vendor lists, mailing lists, catalogues, research material, URLs, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same, engineering information, test results, plans, personnel and employment records (other than records with respect to former employees or employees who do not become employees of Buyer as of or after the Closing Time), safety and environmental reports, data, studies and documents, and fixed asset ledgers;

(i) the Intellectual Property and licenses listed on Schedule 2.1(i) and any accrued claims or causes of action to enforce or protect any such Intellectual Property, but specifically excluding the Excluded Intellectual Property (the "Acquired Intellectual Property");

(j) Telephone numbers, the Website, email addresses and listings;

(k) the Customer Lists (subject to the privacy policies of Debtor relating to the information in such lists in effect as of the Petition Date), and all rights and liabilities relating to the Customer Lists (the "Acquired Customer Lists"), but specifically excluding the Excluded Customer Lists;

(l) to the extent assignable or transferrable, all rights of Debtor under all warranties (expressed or implied), representations, indemnities, or guaranties made by third parties to or for the benefit of Debtor with respect to the Purchased Assets;

(m) other than Excluded Assets, all other properties, assets and rights of Debtor that are not expressly excluded herein of every nature, tangible and intangible, real or personal, now existing or hereafter acquired, used or held by Debtor for use in the Business, whether or not reflected on the books or financial statements of Debtor, as the same shall exist at the Closing Time; and

(n) all goodwill related to the foregoing.

## Section 2.2 Cure Amounts.

(a) Each of the Assumed Real Property Leases, the Assumed Contracts, the Assumed Equipment Leases, and the Acquired Intellectual Property acquired by Buyer pursuant to this Agreement are set forth on Schedule 2.1(a), Schedule 2.1(b), Schedule 2.1(c), and Schedule 2.1(i), respectively, and Buyer reserves the right, with Seller's assistance, as required, to assume and continue those leases, contracts, and other obligations.

(b) Seller shall seek Bankruptcy Court confirmation and approval of the Cure Amounts, to the extent applicable, for the Assumed Real Property Leases, the Assumed Contracts, the Assumed Equipment Leases and the Acquired Intellectual Property, at the Sale Hearing in accordance with the Bidding Procedures Order. Buyer shall be responsible for payment of all Cure Amounts for all of the foregoing, with all such required payment to be delivered in a manner acceptable to Seller on or before the Closing Date.

(c) Subject to (i) the Bankruptcy Court entering the Sale Order, (ii) Buyer paying all Cure Amounts, and (iii) Buyer providing adequate assurance of future performance to counterparties to the extent required by the Bankruptcy Court, Seller shall assume and assign to Buyer, if applicable, each Assumed Real Property Lease, Assumed Contract, Assumed Equipment Lease and, to the extent applicable, Acquired Intellectual Property, effective as of the Closing Date and in accordance with an order of the Bankruptcy Court (which may be the Sale Order).

## Section 2.3 Excluded Assets

Except as stated in Section 2.1 or elsewhere in this Agreement, Buyer will not purchase and accept, and Seller will not sell, assign, convey, deliver or otherwise transfer, any of Seller's right, title and interest in or to any of the following assets (collectively, the "Excluded Assets"):

(a) all cash and cash equivalents as of the Closing Date (including credit card receivables and checks received prior to the Closing, whether or not deposited or cleared prior to the Closing);

(b) all Contracts other than the Assumed Contracts, the Assumed Equipment Leases, the Assumed Real Property Leases or the Acquired Intellectual Property;

(c) all Equipment set forth on Schedule 2.3 ("Excluded Equipment");

(d) all Permits set forth on Schedule 2.3 ("Excluded Permits");

(e) all of Seller's bank accounts, lockbox numbers, marketable or other securities, commercial paper, certificates of deposit and other bank deposits and treasury bills;

(f) all Insurance Policies, including all proceeds thereof and claims in connection therewith;

(g) all Avoidance Actions and all Claims arising prior to the Closing Date (collectively, the "Excluded Claims"), including, without limitation, all Claims which the Seller may have against any person or entity under Sections 544, 547, 548, 549, 550 or other applicable sections of the Bankruptcy Code or state statutes, or at common law or in equity or for tax refunds related to any Taxes paid or accrued for any period ending on or prior to the Closing Date.

(h) all escrowed funds, security deposits, prepaid expenses, deposits or reserves with any vendor, utility or other third party;

(i) all personnel records and other records that Debtor is required to retain in its possession pursuant to any Applicable Law or is not permitted under Applicable Law to provide to Buyer or that do not exclusively relate to the Business;

(j) all rights of Seller under this Agreement or any agreement executed in connection with or relating to this Agreement;

(k) the company seal, minute books, charter documents, stock or equity record books and such other books and records as pertain to the organization, existence or capitalization of Debtor;

(l) Debtor's directors and officers liability insurance policy, executive or incentive compensation, bonus, deferred compensation, pension, profit sharing, savings, retirement, stock option, stock purchase, group life, health or accident insurance or other employee benefits plan of any kind;

(m) all Intellectual Property that is specifically identified on Schedule 2.3 (the "Excluded Intellectual Property");

(n) all Customer Lists that are specifically identified on Schedule 2.3 (the "Excluded Customer Lists");

(o) all rebates, price adjustments, adjustments to accounts payable, customer programs, discounts or promotions, and related rights to payment owed to Debtor which accrued on or before the Closing Date; and

(p) all equity interests of Debtor, including any options, warrants or other securities exchangeable or convertible into equity interests of Debtor.

#### Section 2.4 Assumed Liabilities

At the Closing, Buyer shall assume fully and agree to pay, perform, fulfill and discharge, and shall pay, perform, fulfill and discharge, as they become due, the following liabilities:

(a) Cure Amounts;

(b) if Buyer shall assume the real property leases, all Claims with respect to the Real Property arising or payable after the Closing;

(c) all Claims relating to Buyer's ownership or use of the Purchased Assets;

(d) all Claims relating to the operation of the Business from and after the Closing (including without limitation, if applicable, under the Assumed Contracts, the Assumed Real Property Leases, the Assumed Equipment Leases, the Acquired Permits, the Acquired Customer Lists, and the Acquired Intellectual Property);

(e) all Claims for rebates, price adjustments, adjustments to accounts payable, customer programs, discounts or promotions, arising from the operation of the Business from and after the Closing; and

#### Section 2.5 Excluded Liabilities

Except with respect to the Assumed Liabilities, Buyer shall not assume, or be deemed to have assumed, and Debtor shall be solely and exclusively liable with respect to, all Claims against Debtor including, without limitation, all Claims relating to the Excluded Assets (all such Claims other than Assumed Liabilities, the "Excluded Liabilities").

#### Section 2.6 Assignment of Assumed Contracts and Purchased Assets

To the maximum extent permitted by the Bankruptcy Code, the Assumed Contracts and Purchased Assets shall be transferred, assumed and assigned, as applicable, to Buyer as of the Closing Date or such other date as provided in an order of the Bankruptcy Court. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any asset or any right thereunder if an attempted assignment without the consent of a third party would constitute a breach or in any way adversely affect the rights of Buyer or Seller thereunder. If such consent is not obtained or such assignment is not attainable pursuant to Sections 105, 363 or 365 of the Bankruptcy Code (other than as a result of the failure to pay Cure Amounts), Seller shall use its commercially reasonable efforts to obtain such consent required to novate or assign any Assumed Contract to be assigned to Buyer hereunder provided that Seller shall not be obligated to incur any costs or expenses or provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining such consent to novate or assign.

### **ARTICLE III** **PURCHASE PRICE**

#### Section 3.1 Purchase Price; Assumption of Liabilities

The Purchase Price for the Purchased Assets shall be the sum of five million, six-hundred thousand Dollars (\$5,600,000.00) (the "Purchase Price"). At the Closing, (a) Buyer shall pay to the Seller in immediately available funds the Purchase Price (adjusted for any apportionments in accordance with Section 4.4), less the Deposit; and (b) Buyer shall assume all of the Assumed Liabilities.

#### Section 3.2 Deposit

Upon the execution and delivery of this Agreement by Buyer to Seller, Buyer shall, pursuant to the provisions of Section 12.17 below, deposit with the Seller by cashiers' check or wire transfer of immediately available funds, an amount equal to the Deposit, and (b) within three (3) Business Days after Buyer is approved as a Successful Bidder (as defined in the Bid Procedures Order), Buyer

shall deposit with Seller such additional sum by cashiers' check or wire transfer of immediately available funds as necessary to increase the Deposit to ten percent (10%) of the amount of the successful bid.

### Section 3.3 Allocation of Purchase Price

Buyer shall prepare and deliver to Seller a schedule (the "Allocation Schedule") allocating the Purchase Price and the Assumed Liabilities (and all other capitalized costs) among the Purchased Assets in accordance with Section 1060 of the IRC and any corresponding requirements of any state or local tax laws as soon as practicable after the execution of this Agreement, and in no case later than fifteen (15) days before the Closing Date. Seller will have the right to raise reasonable objections to the Allocation Schedule within fifteen (15) days after its receipt thereof, in which event Buyer and Seller will negotiate in good faith to resolve such objections. If Buyer and Seller cannot mutually resolve Seller's reasonable objections to the Allocation Schedule within ten (10) days after Buyer's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to an independent accounting firm reasonably acceptable to each of Buyer and Seller on the next day, for a decision that shall be rendered by such independent accounting firm within ten (10) days thereafter and shall be final and binding upon each of the parties. The fees, costs and expenses incurred in connection by the independent accounting firm shall be shared in equal amounts by Buyer, on the one hand, and Seller, on the other. Buyer and Seller each shall report and file all Tax Returns (including amended Tax Returns and claims for refund) and shall cooperate in the filing of any forms (including Internal Revenue Service Form 8594) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or any other proceedings).

## ARTICLE IV CLOSING

### Section 4.1 The Closing

(a) The closing of all of the transactions contemplated hereby (the "Closing") shall occur on a date and time to be mutually agreed upon by the Parties (the "Closing Date"), but in no event after the date that is the later of twenty (20) days after entry of the Sale Order or May 15, 2015 (the "Outside Date"), unless another time or date is agreed to in writing by each of the Parties. The Closing will be held at the offices of Hellring Lindeman Goldstein & Siegal LLP ("Seller's Counsel"), One Gateway Center, Newark New Jersey 07102, and to the extent

feasible, the Closing will be held by overnight courier or the electronic exchange of documents in Adobe (PDF) format or by facsimile, without the principals present. The Closing shall be effective as of 12:01 a.m. (New Jersey time) on the Closing Date (the "Closing Time").

(b) Upon completion of the Closing, Buyer shall own the Purchased Assets and Buyer shall have assumed and be obligated to perform and discharge, in accordance with their respective terms, the Assumed Liabilities. Thereafter, neither Seller nor Debtor shall have any further income participation or ownership interest in any of the Purchased Assets and no obligation with respect to any of the Assumed Liabilities.

#### Section 4.2 Seller's Deliveries

At the Closing, Seller shall deliver to Buyer:

(a) a bill of sale and assumption and assignment agreement transferring ownership of all Purchased Assets and the Assumed Liabilities, duly executed by Seller and dated as of the Closing Date and in a form reasonably acceptable to Seller and Buyer (the "Bill of Sale and Assumption and Assignment Agreement");

(b) a trademark assignment, duly executed by Seller and in a form reasonably acceptable to Seller and Buyer, including a separate trademark assignment suitable for recording with regard to each jurisdiction and each recordable right or interest, such as each trademark registration, each application to register a trademark, or each recorded or recordable license interest;

(c) a copyright assignment, duly executed by Seller and in a form reasonably acceptable to Seller and Buyer, including a copyrights assignment covering unregistered copyrights and a separate copyright assignment suitable for recording with regard to each jurisdiction and each recordable right or interest, such as each copyright registration, each application to register a copyright, or each recorded or recordable license interest;

(d) if applicable, duly executed Real Property Lease Assumption and Assignment Agreements in recordable form that is reasonably acceptable to Seller and Buyer ("Real Property Lease Assumption and Assignment Agreements"), separately for each Assumed Real Property Lease;

(e) originals or copies of all Assumed Contracts to the extent such are in the possession or control of Seller; and



(f) all other documents, certifications and other instruments as may be reasonably required to consummate the transaction contemplated hereby.

#### Section 4.3 Buyer's Deliveries

At the Closing, Buyer shall deliver:

(a) the Purchase Price (adjusted for any apportionments in accordance with Section 4.4), less the Deposit, by a wire transfer of immediately available funds to the account designated in writing by Seller;

(b) unless otherwise directed in writing by Seller, to each non-debtor party to an Assumed Contract, Assumed Real Property Leases, Assumed Equipment Leases and Acquired Intellectual Property, funds in an amount equal to the Cure Amount with respect to such Person's Assumed Contract, Assumed Real Property Lease, Assumed Equipment Lease and Acquired Intellectual Property, as applicable;

(c) the Bill of Sale and Assumption and Assignment Agreement, duly executed by Buyer,

(d) evidence of Buyer's authority, and the authority of the person executing any documents at Closing on behalf of Buyer, reasonably acceptable to Seller, to enter into the transactions contemplated by this Agreement; and

(e) such other documents, certificates and other instruments as may be reasonably required to consummate the transaction contemplated hereby.

#### Section 4.4 Apportionments

(a) Subject to the other provisions of this Section 4.4, the following items, without duplication, are to be apportioned between Seller and Buyer with respect to the Purchased Assets as of 11:59 P.M., New Jersey time, on the date immediately prior to the Closing Date and at the Closing, the net amount thereof shall, (x) if in favor of Seller, added to the Purchase Price and (y) if in favor of Buyer, credited by Seller against the Purchase Price:

(i) if applicable, rents and all other lease obligations, whether for real property or equipment;

(ii) if applicable, all utilities, including taxes thereon;

(iii) deposits on account with any governmental agency having jurisdiction over the Purchased Assets, to the extent transferred to Buyer;

(iv) annual permit, license and inspection fees, if any, on the basis of the fiscal year for which levied, if the rights with respect thereto are transferred to Buyer; and

(v) all other items that reasonably require apportionment in accordance with local custom and practice to effectuate the transactions contemplated hereby.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants, to the Knowledge of Seller, to Buyer as follows:

#### **Section 5.1 Organization**

Debtor is a corporation duly organized and validly existing under the laws of the State of Delaware. Debtor is qualified to do business and in good standing in the States of Delaware and New Jersey. Subject to any necessary authorization or approval from the Bankruptcy Court, Debtor has all requisite corporate power and authority to carry on the Business and to own and use the assets of the Business except where the failure to have such full power and authority would not have a Material Adverse Effect; and

#### **Section 5.2 Authorization, etc.**

Subject to the Bankruptcy Court's entry of the Sale Order, Seller has the power and authority to execute and deliver this Agreement, to perform fully his obligations hereunder, and to consummate the transactions contemplated hereby. Seller has duly executed and delivered this Agreement. Subject to the Bankruptcy Court's entry of the Sale Order, this Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

#### **Section 5.3 Litigation**

Except for matters subject to the jurisdiction of the Bankruptcy Court, as of the date hereof, to the Knowledge of Seller, there is no action, suit, proceeding pending or threatened by or against or relating to the Business or any of the Purchased Assets, other than as set forth on Schedule 5.3 hereto.

#### Section 5.4 Title; No Liens

Subject to entry of the Sale Order by the Bankruptcy Court, the Purchased Assets shall be delivered to Buyer free and clear of all Liens (i) other than Permitted Liens and Exceptions (including the Permitted Liens and Exceptions set forth on Schedule 5.4 attached hereto), (ii) other than the rights and interests arising out of the Assumed Real Property Leases, and (iii) except for those Purchased Assets that are leased or licensed to Debtor, as to which such Debtor has, and at the Closing will have, valid licensed or leasehold interests.

#### Section 5.5 Taxes

(a) Seller has paid (or will pay out of the Purchase Price received at Closing) all Taxes (if any) due and owing that are necessary to convey title to the Purchased Assets to Buyer as provided in this Agreement.

(b) As of the Closing Date (and assuming payment of the Cure Amounts), there will be no Liens for Taxes upon any of the Purchased Assets other than Permitted Liens and Exceptions.

#### Section 5.6 Real Property

To the Knowledge of Seller, the Assumed Real Property Leases, to be assumed by Buyer only at Buyer's discretion, are in full force and effect.

Section 5.7 Brokers, Finders, etc. Seller has **not** agreed to pay any fee or commission to any agent, broker, finder, or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

#### Section 5.8 Disclaimer

Except as otherwise expressly provided in this Agreement, the Purchased Assets are being sold AS IS, WHERE IS WITHOUT RECOURSE TO, REPRESENTATION BY, OR WARRANTIES BY, SELLER OF ANY KIND OR DESCRIPTION WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AND/OR REPRESENTATIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PHYSICAL CONDITION, TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE AND WITH ALL FAULTS. Without limiting the generality of the foregoing, Seller makes no warranties, express or implied, of any kind or nature, including, but not limited to, no warranties with

respect to the quality, condition, content, merchantability, or fitness for a particular purpose. In addition, to the extent any of Seller's software is included in the Purchased Assets, Seller makes no representations or warranties regarding Buyer's right to use such software, as to the performance of the software, its non-infringement or otherwise. In such circumstances, Seller recommend that Buyer contact the software manufacturer directly to resolve any such issues.

#### Section 5.9 No Other Representations or Warranties

Except for the express representations and warranties contained in this Article V (including the Schedules), neither Seller nor any other Person makes or shall be deemed to make any representation, warranty or statement of any kind or nature to Buyer regarding the Business, the Purchased Assets, the Assumed Liabilities, or the Transactions. Seller disclaims any other representations or warranties whether made by Seller, any Affiliate of Seller, or any of Seller's agents, attorneys, representatives or advisors. Buyer shall only be entitled to rely on the representations, warranties or statements that are expressly set forth herein and Buyer will not have any right or remedy arising out of any other representation, warranty or statement. Buyer further acknowledges and agrees that any cost estimates, projections or other forecasts or predictions contained or referred to in this Agreement or in any offering or other materials that have been provided to Buyer (whether orally or in writing) in connection with any of the transactions contemplated hereby are not and shall not be deemed to be representations and warranties of Seller, Debtor or any Representatives of Debtor. Seller makes no representations or warranties to Buyer regarding the profitability of Seller's Business or its likelihood of success. The disclosure of any matter or item in Article V or in any Schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or material to the Business, the Purchased Assets, or the Transaction, or that such matter or any errors or omissions with respect thereto is material or would result in Material Adverse Effect.

#### 5.10 Good Faith Purchaser.

This Agreement was negotiated and entered into at arms' length, and to the Knowledge of Seller, in good faith; and the Parties have not engaged in any collusion with respect to setting or fixing the Purchase Price.

**ARTICLE VI**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

Section 6.1 Organization and Good Standing

Buyer is a [corporation] duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has full corporate power and authority to own, lease and operate its properties and carry on its business as it is now being conducted.

Section 6.2 Authorization, etc. Buyer has the corporate power and authority to execute and deliver this Agreement, to perform fully its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite action of Buyer. Buyer has duly executed and delivered this Agreement. This Agreement is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

Section 6.3 No Conflicts, etc. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not conflict with or result in a violation of or under (with or without the giving of notice or the lapse of time or both) or result in the acceleration of or give rise to the right of any Person to terminate, modify or cancel under, or result in the loss of any rights, privileges, options or alternatives under, or result in the creation of any Lien on any of Buyer's assets under (a) the articles of organization or operating agreement of Buyer, (b) any Applicable Law applicable to Buyer, or (c) any contract, agreement or other instrument applicable to Buyer, except for such conflicts, violations, defaults, accelerations or rights that, individually and in the aggregate, have not impaired and shall not impair the ability of Buyer to perform any of its obligations under this Agreement. No Governmental Approval or other Consent is required to be obtained or made by Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

Section 6.4 **"AS-IS/WHERE-IS" Purchase After Investigation**

Buyer is purchasing the Purchased Assets AS IS, WHERE IS WITHOUT RECOURSE TO, REPRESENTATION BY, OR WARRANTIES BY, SELLER OF ANY KIND OR DESCRIPTION WHATSOEVER, EITHER

EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AND/OR REPRESENTATIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PHYSICAL CONDITION, TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE AND WITH ALL FAULTS. Buyer has investigated and examined the Purchased Assets and Assumed Liabilities and has been granted full and complete access to each of the Purchased Assets and all books and records related to each of the Assumed Liabilities. Buyer has examined and investigated each of the Purchased Assets and evaluated the Assumed Liabilities to the extent Buyer, in its sole discretion, determined to be appropriate. Buyer has not relied on any representation or statement of Seller or Debtor in connection with Buyer's decision to execute or perform under this Agreement or to acquire the Purchased Assets. Buyer further acknowledges and agrees that any cost estimates, projections or other forecasts or predictions contained or referred to in this Agreement or in any offering or other materials that have been provided to Buyer (whether orally or in writing) in connection with any of the transactions contemplated hereby are not and shall not be deemed to be representations and warranties of Seller, Debtor or any Representatives of Debtor. Seller makes no representations or warranties to Buyer regarding the profitability of Seller's Business or its likelihood of success. The disclosure of any matter or item in Article V or in any Schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or material to the Business, the Purchased Assets, or the Transaction, or that such matter or any errors or omissions with respect thereto is material or would result in Material Adverse Effect.

#### Section 6.5 Litigation

As of the date hereof, there is no action, suit or proceeding pending or, to Buyer's knowledge, threatened by or against or affecting Buyer in connection with or relating to the transactions contemplated by this Agreement or of any action taken or to be taken in connection herewith or the consummation of the transactions contemplated hereby.

#### Section 6.6 Brokers, Finders, etc.

Neither Buyer nor any of its Affiliates has agreed to pay any fee or commission to any agent, broker, finder, or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

#### Section 6.7 Financial Ability to Perform

Buyer is fully capable from a financial standpoint of performing its obligations under this Agreement and is not aware of any facts, circumstances or conditions that could reasonably be expected to render Buyer financially incapable of performing its obligations under this Agreement. Buyer has, and will at the Closing have, cash, cash equivalents, available lines of credit or other sources of immediately available funds readily available sufficient to enable Buyer to consummate the transactions contemplated by this Agreement to which it is to be a party. Immediately after giving effect to the transactions contemplated by this Agreement, Buyer shall be able to pay its debts as they become due and shall own property having a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities). Immediately after giving effect to the transactions contemplated by this Agreement, Buyer shall have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Buyer.

#### Section 6.8 Adequate Assurances Regarding Assumed Contracts

Buyer is capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts.

#### Section 6.9 No Collusion; Good Faith

Buyer acknowledges and confirms that the Purchase Price (a) has not been controlled by any agreement among any potential bidders, and (b) has not been collusive with any other bidder. This Agreement was negotiated and entered into at arms' length, and to the Knowledge of Buyer, in good faith; and the Parties have not engaged in any collusion with respect to setting or fixing the Purchase Price.

### **ARTICLE VII** **COVENANTS**

#### Section 7.1 Operations

Seller shall have no obligation to repair or maintain the Purchased Assets and Buyer agrees to accept any and all Purchased Assets in their "AS-IS, WHERE-IS," condition on the Closing Date.

## Section 7.2 Access and Information

(a) Prior to the Closing, Seller shall give Buyer and its Representatives, reasonable access during normal business hours to, and furnish them with, material documents, records, work papers and other information with respect to, all properties, assets, books, contracts, commitments, reports and records constituting or otherwise relating to the Purchased Assets, as Buyer shall reasonably request. In addition, Seller shall permit Buyer and its Representatives reasonable access to such personnel of Seller during normal business hours as may be necessary to Buyer in its review of the Purchased Assets and the above-mentioned documents, records and information. All such information shall be provided subject to the provisions of the Confidentiality Agreement executed by Buyer.

(b) From and after the Closing, Buyer shall, upon written request, grant Seller and Debtor or any of their Affiliates or Representatives reasonable access to and provide to Seller and Debtor or any of their Affiliates any copies of records with respect to any of the Purchased Assets, the Assumed Liabilities or the Business relating to the period up to and including the Closing Date.

## Section 7.3 Further Actions

As promptly as practicable, each Party will:

(a) use its commercially reasonable efforts to take all actions and to do all things necessary to consummate the transactions contemplated hereby by the Closing Date;

(b) file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by such Party pursuant to Applicable Law in connection with the Agreement, the sale and transfer of the Purchased Assets pursuant to this Agreement and the consummation of the other transactions contemplated hereby;

(c) use its commercially reasonable efforts to obtain, or cause to be obtained, all Consents (including all Governmental Approvals) necessary to be obtained by such Party in order to comply with applicable law and any regulatory procedure, consummate the sale and transfer of the Purchased Assets pursuant to this Agreement and the consummate the other transactions contemplated hereby to the extent such Consents are not provided for or satisfied by the Sale Order (provided that in no event shall Seller be obligated to incur any costs or expenses



or provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining such Consents); and

(d) promptly inform the other Party of any communication from any Governmental Authority regarding any of the transactions contemplated by this Agreement. If any party hereto or Affiliate thereof receives a request for additional information or documentary material from any such Governmental Authority with respect to the transactions contemplated by this Agreement, then such Party will use its reasonable efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Party, an appropriate response in compliance with such request.

#### Section 7.4 Adequate Assurances

Buyer will provide Seller with information regarding Buyer's intended business plans and capital structure on and after the Closing Time, and will cooperate with Seller in communicating with third parties to Assumed Contracts, Assumed Real Property Leases, Assumed Equipment Leases or Acquired Intellectual Property as may be reasonably necessary to assist Seller in establishing that Buyer has satisfied the requirement of adequate assurance of future performance contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts, Assumed Real Property Leases, Assumed Equipment Leases and Acquired Intellectual Property. In addition, Buyer shall provide to Seller and its Representatives access during normal business hours to, and shall furnish them with, material documents, books and records, and other information as reasonably requested by Seller in order to determine the financial ability of Buyer to consummate the transactions contemplated hereby, including, without limitation, written evidence of a firm commitment for financing, or other evidence satisfactory to the Trustee of the ability to consummate the proposed transaction without financing.

#### Section 7.5 Further Assurances

Following the Closing, each Party shall, from time to time, execute and deliver (or cause to be executed and delivered) such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by the other Party, to confirm and assure the rights and obligations provided for in this Agreement and render effective the consummation of the transactions contemplated hereby, at the requesting Party's cost and expense.

### Section 7.6 Employees

Buyer acknowledges that it is in its best interest to maintain the morale of Debtor's existing roster of employees and to maintain a stable work force. Accordingly, Buyer agrees with respect to Debtor's employees as follows: (a) Buyer will not terminate, without Cause, the employment of any internal, administrative employee who is working in the U.S. on a H-1B Visa, unless it gives at least four (4) months prior notice of termination, (b) for the first six (6) months following the Closing, should Buyer terminate, without Cause, the employment of any employee not described at part (a) of this Section, Buyer will provide four (4) weeks prior notice of termination, and (c) Buyer will cooperate and assist, without cost to Buyer, to maintain the active status of the open I-140 immigrant worker petitions of Debtor's current employees.

### Section 7.7 Limitations on Duties

Each Party shall be obligated to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants, duties or obligations shall be read into this Agreement or any other agreement against any such Person, other than the duties to act in good faith and in a commercially reasonable manner.

## **ARTICLE VIII**

### **TAXES**

### Section 8.1 Taxes Related to Purchase of Assets

All federal, state and local sales and transfer taxes, including all state and local taxes in connection with the transfer of the Purchased Assets, and all recording and filing fees (collectively, "Transaction Taxes") that may be imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets, and are not exempt under Section 1146(a) of the Bankruptcy Code, shall be paid by Buyer, provided that Seller shall pay all recording and filing fees related to the Chapter 11 Case and any releases, terminations or consents which are necessary to consummate the transactions contemplated hereby. Transaction Taxes do not include any tax in the nature of an income tax, including any capital gains, franchise, excise, inheritance, estate, succession, or gift taxes. Buyer and Seller reasonably will cooperate with each other to minimize any such Transaction Taxes and to determine appropriate taxing authorities and amount of Transaction Taxes, if any, payable in connection with the transactions contemplated under this Agreement.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT**

#### **Section 9.1 Conditions to Obligations of Each Party**

The obligations of the Parties to consummate the transactions contemplated hereby at the Closing shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

(a) Entry of Sale Order. The Bankruptcy Court shall have entered the Sale Order.

(b) No Injunction. Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any Applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority.

(c) Illegality. No court or other Governmental Authority shall have determined that any Applicable Law makes illegal the consummation of the transactions contemplated hereby, and no proceeding with respect to the application of any such Applicable Law to such effect shall be pending.

#### **Section 9.2 Conditions to Obligations of Buyer**

The obligations of Buyer to consummate the transactions contemplated hereby at the Closing shall be subject to the fulfillment (or waiver by Buyer) on or prior to the Closing Date of the following additional conditions:

(a) Representations; Performance. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, as if made at and as of the Closing Date (except for representations and warranties that are made as of a specific date, which representations and warranties shall be true and correct in all material respects at and as of such respective specific date); provided, however, that the failure of any such representations or warranties to be true and correct on and as of the Closing Time shall not constitute a basis for Buyer to refuse to consummate the transactions contemplated hereby unless such failure, either individually or in the aggregate, has resulted in or would reasonably be expected to result in a Material Adverse Effect. Seller shall have duly performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(b) Transfer and Assumption Documents. Seller shall have delivered to Buyer at the Closing the items specified in Section 4.2.

### Section 9.3 Conditions to Obligations of Seller

The obligation of Seller to consummate the transactions contemplated hereby at the Closing shall be subject to the fulfillment (or waiver by Seller), on or prior to the Closing Date, of the following additional conditions:

(a) Representations; Performance. The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects, as if made at and as of the Closing Date. Buyer shall have duly performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; provided, however, that the failure of any such representations or warranties to be true and correct on and as of the Closing Time shall not constitute a basis for Seller to refuse to consummate the transactions contemplated hereby unless such failure, either individually or in the aggregate, has or would reasonably be expected to have a material and adverse effect on Buyer's ability to perform its obligations under this Agreement.

(b) Payment of Purchase Price. Buyer shall have paid to Seller the Purchase Price (net of the Deposit and applicable credits as provided in Section 3.1) and Buyer shall have paid the Cure Amounts for Assumed Contracts, Assumed Real Property Leases, Assumed Equipment Leases and Acquired Intellectual Property to the extent required pursuant to Section 4.3(b).

(c) Transfer and Assumption Documents. Buyer shall have delivered to Seller at the Closing the items specified in Section 4.3.

(d) Assurance of Future Performance. Buyer shall have provided sufficient adequate assurance of future performance of its obligations under the Assumed Contracts after the Closing, as shall be required by the Bankruptcy Court.

## **ARTICLE X** **TERMINATION**

### Section 10.1 Termination

This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of Seller and Buyer;

(b) by Seller or Buyer if the Closing shall not have been consummated on or before the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Closing to be consummated by such date;

(c) by Seller or Buyer, upon the entry of an Order of the Bankruptcy Court authorizing the sale of the Purchased Assets to a Person other than Buyer (or an Affiliate of Buyer designated by it); provided, however, that Buyer shall not be permitted to terminate this Agreement upon the entry of such an order if Buyer is determined to be an Alternate Bidder (as defined in the Bidding Procedures Order) for any of the Purchased Assets;

(d) by Seller or Buyer, if any Order permanently restraining, prohibiting or enjoining Buyer or Seller from consummating the transactions contemplated hereby is entered and such Order shall have become a Final Order;

(e) by Seller, if the Buyer shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which would give rise to the failure of a condition set forth in Article IX, which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by Seller to the Buyer specifying such breach; or

(f) by Buyer, if Seller shall have breached any of their representations, warranties, covenants or agreements contained in this Agreement which would give rise to the failure of a condition set forth in Article IX, which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by the Buyer to Seller specifying such breach.

A Party desiring to terminate this Agreement pursuant to Section 10.1 shall give notice of such termination to the other Party or Parties.

#### Section 10.2 Effect of Termination

If this Agreement is terminated pursuant to the provisions of Section 10.1, then this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any Party hereto, or any of its equity holders, Representatives or Affiliates, except for any liabilities expressly set forth below in Section 10.3, and except that each Party will return or destroy all documents, workpapers and other material of any other Party relating to the transactions contemplated by this

Agreement, whether so obtained before or after the execution of this Agreement, to the Party furnishing the same.

### Section 10.3 Deposit

If this Agreement is terminated pursuant to Section 10.1(a), Section 10.1(b) (except where the failure of the Closing to be consummated by the Outside Date resulted from the breach by Buyer of any provision of this Agreement), Section 10.1(c), Section 10.1(d), or Section 10.1(f), the Deposit and all interest accrued thereon shall be released by the Seller to Buyer pursuant to the terms of the Section 12.17 below and Seller shall have no further liabilities or obligations hereunder. Seller shall release the Deposit and all interest accrued thereon within five (5) business days of the termination of this agreement pursuant to Section 10.1(a), Section 10.1(b) (except where the failure of the Closing to be consummated by the Outside Date resulted from the breach by Buyer of any provision of this Agreement), Section 10.1(c), Section 10.1(d), or Section 10.1(f), as described above. If this Agreement is terminated pursuant to Section 10.1(b) (where the failure of the Closing to be consummated by the Outside Date resulted from the breach by Buyer of any provision of this Agreement) or Section 10.1(e), the Deposit and all interest accrued thereon shall be remitted to Seller pursuant to the terms of Section 12.17 below. If this Agreement is not terminated, the Deposit and all interest accrued thereon shall be released to Seller at the Closing.

### Section 10.4 Expenses; Termination Fee or Reimbursement Amount Payable By Seller to Buyer in Certain Circumstances

(a) Except as otherwise set forth herein, each Party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

(b) Notwithstanding the foregoing, the Parties recognize and agree that the Seller, as Trustee in a bankruptcy case, must consider higher or better offers received prior to Closing, and that the Bankruptcy Court will establish an auction process to receive higher or better offers (the "Auction"). Accordingly, it is agreed that, provided that Buyer has performed its obligations under this Agreement, Seller shall pay to Buyer a termination fee in the amount of \$50,000 (the "Termination Fee"), upon the occurrence of either of the following events:

(i) If Seller terminates this Agreement and consummates a sale of all or substantially all of the Purchased Assets to a third Person unaffiliated with Buyer; or

(ii) If either the Buyer or the Seller terminates this Agreement because the Buyer is not selected as the successful bidder at the Auction.

(c) Notwithstanding the foregoing, the Parties agree that, provided that Buyer has performed its obligations under this Agreement, if this Agreement is terminated because the Chapter 11 Case is involuntarily converted to a case under Chapter 7 of the Bankruptcy Code, or such Chapter 11 Case is dismissed, then the Seller shall reimburse Buyer's documented, actual and reasonable out-of-pocket costs for due diligence and participation in the bidding and sale approval process (the "Reimbursement Amount"), provided, however that the Reimbursement Amount shall not exceed \$25,000. In such event, no Termination Fee shall be due or payable to Buyer.

(d) The Seller's obligations to pay the Termination Fee or Reimbursement Amount shall constitute a super-priority administrative claim against the Debtor pursuant to sections 105(a), 503(b) and 364(c)(1) of the Bankruptcy Code and shall be senior to, and have priority over, all other claims against the Debtors, other than any claims arising under the Debtors' post-petition factoring agreement with Prestige Capital Partners. The Seller shall only have to pay the Termination Fee after the closing of a competing transaction or closing with a different bidder, such payment to be made from the proceeds received at such closing.

Purchaser shall not be entitled to the Termination Fee or Reimbursement Amount under any circumstances in which Buyer is the successful bidder in connection with the Auction or otherwise consummates a purchase of the Purchased Assets.

## **ARTICLE XI**

### **BANKRUPTCY COURT MATTERS**

#### **Section 11.1 Submission to Bankruptcy Court**

Seller will file with the Bankruptcy Court this Agreement and such motions, pleadings and notices as may be appropriate in connection therewith.

#### **Section 11.2 Buyer's Alternate Bid**

If a bid by a Successful Bidder (as defined in the Bidding Procedures Order) is approved by the Bankruptcy Court and Buyer is determined by Seller to have submitted a Alternate Bid in accordance with the Bidding Procedures Order, then (a) Buyer shall remain bound to this Agreement, on its existing terms and at

the purchase price bid by Buyer, unless and until the sale to the Successful Bidder is consummated or, if later, until the Outside Date, and (b) Buyer's Deposit will be retained until the sale to the Successful Bidder is consummated or, if later, the Outside Date. If Buyer's Alternate Bid is thereafter accepted as the winning bid, the Outside Date for the Closing shall be extended to the date thirty (30) days after Seller provides notice to Buyer that it has been approved as a winning bidder.

### Section 11.3 Sale Order

In accordance with the Bidding Procedures Order, Seller will obtain the entry by the Bankruptcy Court of the Sale Order containing typical and customary provisions in form and substance reasonably satisfactory to Buyer and Seller. Buyer will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of a Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" purchaser under Section 363(m) or any other Section of the Bankruptcy Code and that the Purchase Price was not controlled by an agreement in violation of Section 363(n) or any other Section of the Bankruptcy Code. Seller will request that the Sale Order provide that it shall be effective and enforceable immediately upon entry by the Bankruptcy Court notwithstanding Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

## **ARTICLE XII**

### **MISCELLANEOUS**

### Section 12.1 Casualty

(a) Seller will bear all risk of loss occurring to or upon any portion of the Purchased Assets prior to the Closing Time. In the event that any material portion of any Purchased Assets is damaged or destroyed prior to Closing Time, then with respect to such Purchased Assets Buyer may, at Buyer's option, either (i) proceed to close notwithstanding the damage or destruction of such Purchased Assets; or (ii) exclude such Purchased Assets, in which event Buyer shall have no obligation to close if as a consequence of the exclusion of such Purchased Assets any condition to Closing would not be satisfied. If Buyer closes notwithstanding an unrepaired or unrestored loss to a Purchased Asset, Seller will deliver and/or assign to Buyer any insurance proceeds with respect to such damage or destruction, and all claims against third parties relating thereto, and the adjustment to the Purchase Price shall be limited to the amount of any deductible or self-insured



retention under the applicable policies of insurance. This Section 12.1(a) shall contain Buyer's sole remedy in the event of any casualty.

#### Section 12.2 Expenses

Except to the extent otherwise provided hereby, the Parties shall bear their respective expenses, costs and fees (including any attorneys' or auditors' fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby are consummated (other than enforcement expenses payable pursuant to Section 12.14).

Notwithstanding anything that may be to the contrary in this Agreement, the Buyer shall bear the following expenses:

- (a) all fees and expenses incurred in connection with obtaining any UCC searches;
- (b) all fees and expenses incurred by Buyer for any reports and investigations related to Buyer's due diligence and decision to buy the Purchased Assets; and
- (c) except as provided in Section 8.1, all Transaction Taxes.

#### Section 12.3 Payment of Brokers

Under no circumstances shall Seller be responsible for any broker's commission. Buyer shall be responsible for any brokerage commission or other fees due to any broker or advisor claiming by, through or under Buyer and, as between Seller and Buyer, shall also be responsible for any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by Seller by reason of any claim to any broker's, finder's or other fee in connection with the transactions contemplated by this Agreement by any such broker or advisor.

#### Section 12.4 Severability

If any provision of this Agreement, including any phrase, sentence, clause, section or subsection is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any

other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

Section 12.5 Notices

All notices, requests, demands, approvals, consents, waivers and other communications required or permitted to be given under this Agreement (each, a "Notice") shall be in writing and shall be (a) delivered personally, (b) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (c) sent by next-day or overnight mail or delivery by a nationally recognized carrier, or (d) sent by email, provided that the original copy thereof also is sent by one of the other means specified above in this Section 12.5:

If to Buyer:

Satyakumar Bhavanasi  
President/C.E.O., First Tek, Inc.  
1551 S. Washington Ave., Ste. 402A  
Piscataway, NJ 08854  
(732) 745-0786  
Kumar@First-Tek.com

If to Seller:

Richard B. Honig, Esq.  
Hellring Lindeman Goldstein & Siegal LLP  
One Gateway Center  
Newark, NJ 07102  
(973) 621-9020  
Email: [rbhonig@hlgsllaw.com](mailto:rbhonig@hlgsllaw.com)

with copies to:

Cynthia Romano  
Chrysalis Management  
135 Crossways Parkway West, Suite 402  
Woodbury, NY 11797  
(212) 392-4791 x 101  
Email: [cromano@chrysalismgmt.com](mailto:cromano@chrysalismgmt.com)

and

Daniel Politzer  
135 Crossways Parkway West, Suite 402  
Woodbury, NY 11797  
646-360-0377  
Email: [dpolitzer@chrysalismgmt.com](mailto:dpolitzer@chrysalismgmt.com)

and

Bernard Katz  
CohnReznick  
333 Thornall Street  
Edison, NJ 08837  
(732) 635-3101  
Email: [bernie.katz@cohnreznick.com](mailto:bernie.katz@cohnreznick.com)

or, in each case, at such other address as may be specified in a Notice to the other Party hereto. Each Notice shall be deemed effective and given upon actual receipt or refusal of receipt.

### Section 12.6 Headings

The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

### Section 12.7 Entire Agreement

This Agreement and the Confidentiality Agreement executed by Buyer constitute the entire agreement between the Parties relating to the subject matter hereof and are the final and complete expression of their intent. No other prior or contemporaneous negotiations, promises, agreements, covenants, or representations of every kind of nature, whether made orally or in writing, have been made or relied upon by the Parties, or any of them, in negotiations leading to this Agreement or relating to the subject matter hereof, which are not expressly contained herein or in the Confidentiality Agreement, or which have not become merged and finally integrated herein or therein; it being the intention of the Parties hereto that in the event of any subsequent litigation, controversy, or dispute concerning the terms and provisions of this Agreement or the Confidentiality Agreement, no Party shall be permitted to offer or introduce oral or extrinsic evidence concerning the terms and conditions hereof that are not included or referred therein and not reflected in writing. This Agreement can only be changed, modified or discharged if consented to in writing executed by the Parties hereto.

### Section 12.8 Counterparts

This Agreement may be executed (including by pdf or facsimile transmission) with counterpart signature pages or in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

### Section 12.9 Governing Law, etc.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of New Jersey without giving effect to the conflict of laws rules thereof. Buyer and Seller hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court relating to the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in the

Bankruptcy Court or that the venue thereof may not be appropriate or that this Agreement or any of such documents may not be enforced in or by the Bankruptcy Court, and the Parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in the Bankruptcy Court. Buyer and Seller hereby consent to and grant the Bankruptcy Court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.5 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

Section 12.10      Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and permitted assigns.

Section 12.11      Assignment

This Agreement shall not be assignable (whether by contract, operation of law or otherwise) by any Party without the prior written consent of the other Party.

Section 12.12      No Third Party Beneficiaries

Nothing in this Agreement shall confer any rights upon any Person other than the Parties hereto and their respective successors and permitted assigns.

Section 12.13      Amendment; Waivers; etc.

No discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by each of the Parties (and subject to the approval of the Bankruptcy Court, if required). Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder. No amendment or modification of this Agreement shall be effective unless in writing executed by both Parties. No amendment, or modification hereunder shall be valid or binding unless approved by the Bankruptcy Court.

Section 12.14 Enforcement Expenses

Each Party shall pay its own expenses, including attorneys' fees, in connection with this Agreement and the performance of their respective obligations hereunder, provided, however, that in the event any suit, action, or proceeding is brought to construe or enforce the terms and conditions of this Agreement or the rights of the Parties hereunder, the losing Party shall pay to the prevailing Party all court costs and attorneys' fees and costs incurred in such suit, action, or proceeding to be fixed in amount by the Bankruptcy Court. Attorneys' fees and costs incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. This Section 12.14 is intended to be severable from the other provisions of this Agreement and to survive the Closing and any judgment and, to the maximum extent permitted by law, shall not be deemed merged into any such judgment.

Section 12.15 Bulk Sales

To the extent they may apply, the Parties hereby waive compliance with the provisions of the bulk sales laws of any jurisdiction.

Section 12.16 Time is of the Essence

Time is of the essence with respect to each and every provision of this Agreement.

Section 12.17 Terms of Deposit

The Deposit and any supplement thereto shall be held by the Seller, in a segregated account (if practicable in Seller's sole discretion, bearing interest) at a depository approved by the Office of the United States Trustee under the Buyer's federal employer tax identification number, and shall be disbursed in accordance with the terms and conditions of this Agreement, unless otherwise directed by written notice signed by Seller and Buyer. In the event of a dispute between the parties, Seller shall hold the funds until a Final Order, judgment or decree, beyond appeal, directing the disposition of the Deposit, has been issued and shall thereafter disburse the Deposit in accordance therewith.

Section 12.18 Buyer Indemnification Obligation

After the Closing, Buyer shall indemnify Seller against and shall hold it harmless from any and all claims, suits, proceedings, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and

expenses) that Seller may suffer or incur by reason of or arising out of (i) any obligations of Seller that were expressly assumed by Buyer hereunder, (ii) operation of the Business after the Closing Time; or (iii) any finder's fee or broker's fees incurred by Seller in connection with the transactions contemplated hereby, other than expressly provided for herein. Seller shall provide written notice to Buyer of any claim or dispute as to which indemnification is provided under this Section within ten (10) business days of receipt of written notice by Seller of the commencement, or threatened commencement, of any such action; provided that the failure to provide such notice will not affect any rights hereunder except to the extent Buyer is materially prejudiced thereby. If Buyer shall have failed, neglected or refused to contest such claim or to defend against such litigation or other proceeding in a timely manner, Seller may contest and defend such claim, litigation or proceeding and Buyer shall reimburse Seller for the expenses incurred by Seller in such contest or defense, and Buyer shall be solely responsible for any payment or settlement resulting from such contest or defense, together with Seller's costs thereof.

Section 12.19      No Survival of Representations or Warranties

The representations and warranties contained in this Agreement, and any certificate and other documents delivered pursuant to this Agreement shall not survive the Closing hereunder, and no Person shall have any liability for any breach thereof. The covenants and agreements contained in this Agreement and any certificate and other documents delivered pursuant to this Agreement shall not survive the Closing; provided, however, that any covenant or agreement contained in this Agreement that by its express terms, is to survive the Closing Date or to be performed after the Closing Date shall survive the Closing Date but only for the duration of such covenant or agreement.

Section 12.20      Exclusivity

The representations, warranties, covenants and agreements contained in this Agreement are exclusive, and the Parties confirm that they have not relied upon any other representations, warranties, covenants and agreements as an inducement to enter into this Agreement or otherwise.

Section 12.21      Remedies; Limitations of Remedies and Maximum Liability

(a) Subject to the remedy limitations contained in this Agreement, no remedy herein or otherwise conferred upon Seller or Buyer shall be considered

exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(b) No Liability for Consequential Damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR OTHERWISE.**

(c) Maximum Liability. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT RECEIVED BY SUCH PARTY PURSUANT TO THIS AGREEMENT.**



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

First Tek, Inc. (Buyer)

By:  , March 9, 2015

Satyakumar Bhavanasi

Its: President/C.E.O.

SELLER:

By: \_\_\_\_\_  
Richard B. Honig, as Chapter 11 Trustee for  
the bankruptcy estate of Cloudeeva, Inc.

Schedule 2.1(a)

Assumed Real Property Leases

Counterparty	City	State/Coun try	Name of Assumed Contract
ML7 Windsor, LLC	East Windsor	NJ	NJ Office - 104 East Windsor Drive, East Windsor, NJ 08520

Schedule 2.1(b)

Assumed Contracts

Counterparty	City	State/County	Name of Assumed Contract
Quality Inn	East Windsor	NJ	Trainee lodging
Holiday Inn East Windsor	East Windsor	NJ	Trainee lodging
ML7 Windsor, LLC	East Windsor	NJ	NJ Office Electricity
Vonage America			Telephone Service (NJ and India)
Broadview Networks			Telephone and Internet Service NJ
Comcast-8499 05 245 0130648			Internet NJ
Google Apps			
Assurant Employee Benefits	New York	NY	Employee Benefits
Vision Service Plan	Rancho Cordova	CA	Employee Benefits
Sun Life Financial	New York	NY	Employee Benefits
United Healthcare Insurance Company	Minneapolis	MN	Health Insurance
Sterling Health			FSA Account Maintenance
Nationwide Trust Company,FSB	Columbus	OH	401(k)
Desi Opt.Com	Plainsboro	NJ	Job board
Job Diva Inc	New York	NY	Job board
Abab Tech, Llc	South Plainfield	NJ	Banner Advertising
Monster, Inc.	New York	NY	Job board
Vnext Solutions Inc	Bellevue	WA	Resume hosting provider
ADP Workforce Now	Roseland	NJ	Payroll Service
Pitney Bowes Purchase Power	Pittsburgh	PA	Postage Machine
Coverall Of Southern New Jersey	Old Bridge	NJ	NJ Office Cleaning Service
Hinckley Springs			NJ Office Water Filtration
Village Office Supply	Somerset	NJ	Office Supplies

Schedule 2.1(c)

Assumed Equipment Leases

None

Schedule 2.1(d)

Acquired Intellectual Property

Item	Description
MyBI	Cloudeeva developed business intelligence software
HRMS	Cloudeeva developed employee and client management software

Schedule 2.3

Certain Excluded Assets

None

Schedule 5.3

Litigation

To be supplied if necessary.

Schedule 5.4

Permitted Liens and Exceptions

None





March 9, 2015

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**Re: Asset Purchase Agreement between First Tek, Inc. and Richard B. Honig, as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc.-Due/Accrued Liabilities and Maintenance of Business**

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For the purposes of clarification of the Asset Purchase Agreement between the parties named in this letter's caption, First Tek, Inc. wishes to address the following points:

**A)Due/Accrued Liabilities**

First Tek, Inc. shall not be liable for payment of any amount, whether payroll or other amounts (including payroll taxes, operating expenses, or any other amount whatsoever), due to any employee or other party as of the date of Closing (as defined in the Asset Purchase Agreement between First Tek, Inc. and Richard B. Honig, as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc.), or existing as an ongoing expense. Further, First Tek, Inc. shall not be responsible for payment of any amount, whether payroll or other amounts (including payroll taxes, operating expenses, or any other amount whatsoever), that exist as accrued amounts as of the date of Closing or as an ongoing, accruing amount.

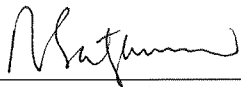
**B)Maintenance of Business**

First Tek, Inc., reserves the right to terminate, without penalty, negotiations with Richard B. Honig, as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc. for the purchase of the assets of Cloudeeva, Inc., should Cloudeeva, Inc. experience a significant reduction in assets or profitability (defined in the Asset Purchase Agreement as a "Material Adverse Effect" on the business) prior to the Closing.

These points for clarification shall be considered as additional, included content, to be read with the terms and covenants established in the Asset Purchase agreement between the signatory parties to this document.

Agreed to this 9<sup>th</sup> date of March, 2015, by:

BUYER (First Tek, Inc.)

By:   
Satyakumar Bhavanasi  
Its: President/C.E.O.

SELLER:

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

Richard B. Honig, as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc.

**BILL OF SALE, ASSIGNMENT & ASSUMPTION AGREEMENT**

WHEREAS, Richard B. Honig ("Trustee"), as Chapter 11 Trustee for the bankruptcy estate of Cloudeeva, Inc., a Delaware corporation ("Debtor") in bankruptcy case number 14-24874 (KCF), styled In re Cloudeeva, Inc., pending in the United States Bankruptcy Court for the District of New Jersey ("Bankruptcy Court") entered into an Asset Purchase Agreement dated as of March 9, 2015 as amended (the "Agreement") with First Tek, Inc. ("Buyer") providing for the sale of substantially all of the operating assets of the Debtor's technology staffing and solutions business (the "Business") (all capitalized terms used herein having the meaning ascribed to them in the Agreement, unless the context otherwise requires) to Buyer; and

WHEREAS the Bankruptcy Court on April 9, 2015 entered its Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6006 and 6006 (A) confirming the Asset Purchase Agreement and related Auction; and (B) authorizing and approving (1) the sale of Purchased Assets to First Tek, Inc., free and clear of liens and other interests and (2) assumption and assignment of executory contracts and unexpired leases ("the "Sale Order");

WHEREAS, the parties having consummated the transactions contemplated by the Asset Purchase Agreement and Sale Order at Closing held on a Closing Date of April 10, 2015, effective as of 11:59 p.m. on the Closing Date ("the Closing Time");

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in accordance with the Sale Order and for and in consideration of the mutual promises contained in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereunder, that Trustee and Buyer hereby agree as follows:

A. Trustee has bargained and sold, and by these presents does grant, bargain, sell, assign, transfer, set over and deliver to Buyer, its successors and assigns, all of Trustee's right, title and interest in and to the following Purchased Assets as of the Closing Time:

1. all of Debtor's furniture, fixtures, equipment, supplies and other tangible personal property, together with all warranties, licenses, releases, service agreements and contractual commitments, if any, express or implied, existing for the benefit of Debtor in connection therewith (collectively, the "Equipment"), but specifically excluding any Excluded Equipment (the "Acquired Equipment");
2. all licenses, permits, franchises and other authorizations of any Governmental Authority relating to the Purchased Assets, and all pending applications therefor (collectively, the "Permits"), but specifically excluding any Excluded Permits (the "Acquired Permits"), to the full extent, if any, that such Acquired Permits are transferable or assignable;
3. all of Debtor's Work in Process (the "Acquired Work in Process");
4. all of Debtor's accounts receivable and all other "Accounts" (as defined in the UCC) of Trustee, including any amounts due with respect to employee advances ("Accounts Receivable"), as of the Closing Time. "Accounts" include any account previously sold to any factor which were uncollected as of the Closing Time, but

excludes Avoidance Actions, Excluded Claims and other Excluded Assets described in the Agreement;

5. to the extent the transfer to Buyer is not prohibited by Law (giving effect to any obtained Orders or consents to transfer), copies or originals of all books, records, files or papers of Debtor, whether in hard copy or electronic format, relating to the Purchased Assets or to the on-going operation of the Business, including, sales and promotional literature, manuals and data, sales and purchase correspondence, vendor lists, mailing lists, catalogues, research material, URLs, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same, engineering information, test results, plans, personnel and employment records (other than records with respect to former employees or employees who do not become employees of Buyer as of or after the Closing Time), safety and environmental reports, data, studies and documents, and fixed asset ledgers;
6. the Intellectual Property and licenses listed on Schedule 2.1(i) to the Agreement and any accrued claims or causes of action to enforce or protect any such Intellectual Property, but specifically excluding the Excluded Intellectual Property (the "Acquired Intellectual Property");
7. Telephone numbers, the Website, email addresses and listings;
8. the Customer Lists (subject to the privacy policies of Debtor relating to the information in such lists in effect as of the Petition Date), and all rights and liabilities relating to the Customer Lists (the "Acquired Customer Lists"), but specifically excluding the Excluded Customer Lists;
9. to the extent assignable or transferrable, all rights of Debtor under all warranties (expressed or implied), representations, indemnities, or guaranties made by third parties to or for the benefit of Debtor with respect to the Purchased Assets;
10. other than Excluded Assets, all other properties, assets and rights of Debtor that are not expressly excluded by the Agreement of every nature, tangible and intangible, real or personal, now existing or hereafter acquired, used or held by Debtor for use in the Business, whether or not reflected on the books or financial statements of Debtor, as the same shall exist at the Closing Time; and
11. all goodwill related to the foregoing.

TO HAVE AND TO HOLD said Purchased Assets onto Buyer, its successors and assigns, to and for its and their own use and benefit forever, and Trustee for itself and for its successors and assigns, does hereby represent, warrant and covenant with and to Buyer, its successors, and assigns, that Trustee has full power to sell and convey the same; that the title, so conveyed, is good and marketable, free and clear of all Liens (i) other than Permitted Liens and Exceptions (including the Permitted Liens and Exceptions set forth on Schedule 5.4 to the Agreement), and (iii) except for those Purchased Assets that are leased or licensed to Debtor, as to which such Debtor has, and at the Closing will have, valid licensed or leasehold interests; and further, that Trustee will warrant and defend the sale and transfer of the Purchased Assets onto Buyer, its successors and assigns against all claims or demands of all persons whomsoever.

B. Buyer hereby assumes fully and agrees to pay, perform, fulfill and discharge, and shall pay, perform, fulfill and discharge, as they become due, the following liabilities:

1. Cure Amounts;
2. all Claims relating to Buyer's ownership or use of the Purchased Assets;
3. all Claims relating to the operation of the Business from and after the Closing (including without limitation, if applicable, under the the Acquired Permits, the Acquired Customer Lists, and the Acquired Intellectual Property);
4. all Claims for rebates, price adjustments, adjustments to accounts payable, customer programs, discounts or promotions, arising from the operation of the Business from and after the Closing;

C. Nothing herein contained shall be deemed to release Trustee or Buyer in any way from any of their respective obligations under or pursuant to the representations, warranties, conditions and agreements set forth in the Agreement.

D. Each of Buyer and Trustee agrees at any time, and from time to time after delivery hereof, upon request, and at the expense of the other party, to execute, acknowledge and deliver, or to cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers and assurances as may be reasonably required to effectuate the intent of this instrument.

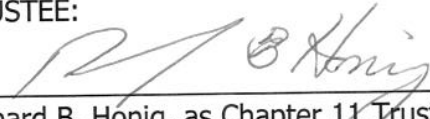
E. This instrument may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

F. This instrument shall be binding on and shall inure to the benefit of each of Trustee and Buyer and their respective successors and assigns.

**[Remainder of page intentionally left blank]**

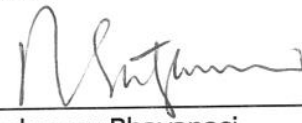
IN WITNESS WHEREOF, the parties hereto execute this instrument on the 10<sup>th</sup> day of April, 2015.

TRUSTEE:

  
Richard B. Honig, as Chapter 11 Trustee for the  
bankruptcy estate of Cloudeeva, Inc.

BUYER:

First Tek, Inc.

By:   
Satyakumar Bhavanasi  
Its: President/C.E.O.

**Archer&Greiner** P.C.  
ATTORNEYS AT LAW

**Douglas G. Leney**  
*Also Member of New Jersey Bar*  
dleney@archerlaw.com  
215-246-3151 Direct

One Liberty Place  
Thirty-Second Floor  
1650 Market Street  
Philadelphia, PA 19103-7393  
(215) 963-3300 Main  
(215) 963-9999 Fax  
[www.archerlaw.com](http://www.archerlaw.com)

January 20, 2016

**VIA FEDEX AND E-MAIL**

Matthew Moloshok, Esquire  
Richard Honig, Esquire  
Hellring, Lindeman, Goldstein & Siegal  
One Gateway Center, 8th Floor  
Newark, NJ 07102

Re: In re Cloudeeva, Inc., Debtor  
Chapter 11 Case No. 14-24874-KCF (the "Bankruptcy Case")

Dear Counsel:

Our firm is counsel to First Tek, Inc. ("FTI") in connection with the above referenced Bankruptcy Case. As you are aware, FTI is a party to that certain Asset Purchase Agreement dated March 9, 2015 (the "APA") by and between FTI, as buyer, and Richard B. Honig, as Chapter 11 Trustee for the Bankruptcy Estate of the Debtor (the "Trustee") as seller, and related sale documents, including, but not limited to, that certain Bill of Sale, Assignment & Assumption Agreement dated April 10, 2015 (the "Bill of Sale") by and between FTI and the Trustee (collectively, the APA, Bill of Sale, and all other related sale documents, together with all amendments, supplements, and modifications thereto may be referred to herein as the "Sale Documents"). On or about April 9, 2015, the Bankruptcy Court entered an Order authorizing and approving, *inter alia*, the sale of the Purchased Assets (as such term is defined in the Sale Documents) to FTI free and clear of liens, claims, and other interests pursuant to Sections 105, 363, and 365 of the Bankruptcy Code [*Docket Ref. No. 552*] (the "Sale Order").

Pursuant to the Sale Documents, FTI acquired all right, title, and interest in the Purchased Assets from the Trustee as of April 10, 2015 (the "Closing Date"). FTI has learned that subsequent to the Closing Date, the Trustee has collected the following sums:

1. A receivable due and owing from Randstaad in the amount of \$2,760;
2. A receivable due and owing from Pactera in the amount of \$5,600; and

Matthew Moloshok, Esquire  
Richard Honig, Esquire  
January 20, 2016  
Page 2

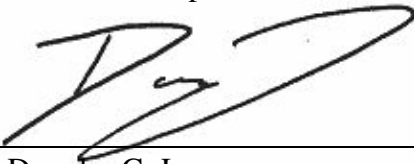
3. A receivable arising from health insurance premium withholdings for former employees of the Debtor (who became employees of FTI as of April 10, 2015) in the aggregate amount of \$41,315.59, with respect to premiums for the payroll period ending April 30, 2015 and paid on May 20, 2015.

Please allow this correspondence to serve as FTI's demand that the Trustee immediately turn over the foregoing sums, totaling **\$49,675.59** (the "Demand Amount"), to FTI. If the Demand Amount is not remitted to FTI on or before close of business (5:00 p.m. EST) **January 25, 2016**, or other arrangements have been made acceptable to FTI in its sole discretion by that time, FTI intends to file an appropriate motion with the Bankruptcy Court, which retained jurisdiction for all disputes arising out of the Sale Documents. See, APA, § 12.9; Sale Order, ¶ 18.

FTI expressly reserves all rights and remedies, including, but not limited to, seeking the recovery of such other additional sums from the Trustee arising out of the Sale Documents as such sums may be discovered. If you wish to discuss the foregoing, please do not hesitate to contact me at the above direct telephone number. Thank you for your anticipated cooperation in this matter.

Very truly yours,

ARCHER & GREINER  
A Professional Corporation

BY:   
Douglas G. Leney

DGL:dgl

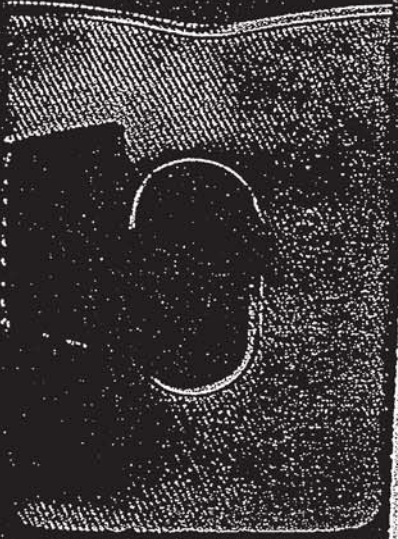
cc: Cynthia Romano (*via FedEx and e-mail*)  
Daniel Politzer (*via FedEx and e-mail*)  
Bernard Katz (*via FedEx and e-mail*)  
First Tek, Inc. (*via e-mail only*)  
Patrick Papalia, Esquire (*via e-mail only*)

Cloudeeva, Inc./First Tek, Inc.  
Apportionment  
Closing date: 4/10/2015

Name	Cloudeeva Amount	Cloudeeva Days	First Tek Days	First Tek Amount	Beginning of period	End of period	Days in period
<b>Employee Benefits</b>							
United Healthcare	72,381.29	10	20	48,254.19	04/01/15	04/30/15	30
Sunlife Financial	5,063.59	10	20	3,375.73	04/01/15	04/30/15	30
VSP (Vision)	898.48	10	20	598.99	04/01/15	04/30/15	30
Assurant (STD and Accident)	780.00	10	20	520.00	04/01/15	04/30/15	30
<b>Job Boards</b>							
DesiOPT	2,774.00	0	366	2,774.00	04/13/15	04/12/16	366
SimplyOPT (vNext Solutions, Inc.)	1,500.00	73	293	1,200.82	01/28/15	01/28/16	366
BenchFolks (ABAB Tech LLC)	6,000.00	73	293	4,803.28	01/28/15	01/28/16	366
<b>IT and Telephony</b>							
Microsoft	356.00	18	13	149.29	03/24/15	04/23/15	31
Google Apps	2,292.56	10	20	1,528.37	04/01/15	04/30/15	30
Vitel	1,132.96	10	20	755.31	04/01/15	04/30/15	30
Godaddy (Domains)	0.00	10	356	0.00	04/01/15	03/31/16	366
Vonage	355.89	21	10	115.13	03/21/15	04/20/15	31
Comcast	138.36	20	11	49.10	03/22/15	04/21/15	31
Broadview	3,145.00	14	17	1,724.68	03/28/15	04/27/15	31
Equisolve	699.00	10	20	466.00	04/01/15	04/30/15	30
<b>Trainee Accommodations</b>							
Quality Inn	13,447.50	10	20	8,965.00	04/01/15	04/30/15	30
Holiday Inn	14,920.50	10	20	9,947.00	04/01/15	04/30/15	30
Indian Operations	65,000.00	10	20	43,333.33	04/01/15	04/30/15	30
NJ Office (incl. OpEx, Elec, ...)	15,910.42	10	20	10,606.95	04/01/15	04/30/15	30
NJ Cleaning	1,441.00	10	20	960.67	04/01/15	04/30/15	30
<b>Total</b>	<b>208,237.55</b>			<b>140,127.82</b>			

For First Tek, Inc.  
KUMAR BHAVANATHI, President/CEO  
V. S. Raju, April 10, 2015  
Po. Cloudeeva, Inc.  
R. B. Hong  
Richard B. Hong, Treasurer





BAL FORWARD	\$	
DEPOSITS/CREDIT		
TOTAL		
MISC TRANSACTION		
THIS CHECK		
BALANCE		

26746

FIRST TEK, INC 04-08  
1551 S WASHINGTON AVE, SUITE 402A  
PISCATAWAY, NJ 08854

DATE

04/10/15

373

PAY TO Richard B. Honig, Trustee

FOR Final Apportionment at closing Cloudcroft  
CHECK IF TAX DEDUCTIBLE

FIRST TEK, INC 04-08  
1551 S WASHINGTON AVE, SUITE 402A  
PISCATAWAY, NJ 08854

373

April 10, 2015

Date

PAY to the  
Order of

Richard B. Honig, Trustee

\$ 140,127.82

One hundred forty thousand and one hundred twenty seven dollars and 82/100



America's Most Convenient Bank

For Final Apportionment at closing Cloudcroft

*[Signature]*

AP

[REDACTED]

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

JERROLD S. KULBACK (JK2505)  
DOUGLAS G. LENEY (DL9012)  
ARCHER & GREINER  
A Professional Corporation  
One Centennial Square  
Haddonfield, NJ 08033-0968  
Tel: (856) 795-2121  
Fax: (856) 795-0574  
*Attorneys for First Tek, Inc.*

In re:

CLOUDEEVA, INC., *et al.*<sup>1</sup>,  
  
Debtors.

Chapter 11

Case No. 14-24874 (KCF)  
(Jointly Administered)

**Hearing Date: March 1, 2016 @ 10:00 am**

**ORDER COMPELLING ENFORCEMENT OF SALE  
ORDER AND RELEASE OF FUNDS HELD BY CHAPTER 11 TRUSTEE  
AND FOR ENFORCEMENT EXPENSES IN CONNECTION THEREWITH**

The relief set forth on the following pages two (2) through two (2) is hereby **ORDERED**.

<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are (i) Cloudeeva, Inc., a Delaware corporation (Case No. 14-24874-KCF); and (ii) Cloudeeva, Inc., a Florida corporation (Case No. 14-24875-KCF).

Debtor: Cloudeeva, Inc., *et al.*  
Case No.: 14-24874-KCF  
Caption of Order: Order Compelling Enforcement of Sale Order and Release of Funds Held  
by Chapter 11 Trustee and for Enforcement Expenses in Connection  
Therewith

Upon the motion of First Tek, Inc. (“FTI”), by and through its undersigned counsel, seeking the entry of an Order compelling (i) the enforcement of that certain Order Confirming the Asset Purchase Agreement and Related Auction and Authorizing and Approving the Sale of Purchased Assets to First Tek, Inc. Free and Clear of Liens and Other Interests and Assumption and Assignment of Executory Contracts and Unexpired Leases dated April 9, 2015 [*Docket Ref. No. 552*] (the “Sale Order”) and compliance therewith by the Chapter 11 Trustee; (ii) the release of certain funds related thereto; and (iii) an award of enforcement expenses (attorneys’ fees and costs) associated therewith (the “Motion”), and for good cause shown,

It is hereby ORDERED as follows:

1. The Trustee<sup>2</sup> is hereby directed to remit the Demand Amount totaling **\$49,675.59** to FTI within five (5) days of entry of this Order.

2. FTI shall be entitled to an award of Enforcement Expenses as provided under the Sale Documents. Counsel for FTI shall file an Affidavit of Services detailing attorneys’ fees and expenses incurred in connection with FTI’s enforcement of its rights under the Sale Documents, within five (5) days of entry of this Order, together with a separate proposed form of Order directing payment thereof.

A true and correct copy of this Order shall be served by FTI upon all parties in interest within five (5) days of entry of this Order.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

CLOUDEEVA, INC., *et al.*<sup>1</sup>,  
  
Debtors.

Chapter 11

Case No. 14-24874 (KCF)  
(Jointly Administered)

**Hearing Date: March 1, 2016 @ 10:00 am**

**CERTIFICATE OF SERVICE**

I, JERROLD S. KULBACK:

☒ represent First Tek, Inc. in the above-captioned matter.

☐ am the secretary/paralegal for \_\_\_\_\_, who represents the  
\_\_\_\_\_ in the above captioned matter.

☐ am the \_\_\_\_\_ in the above case and am representing myself.

2. On February 5, 2016, I sent a copy of the following pleadings and/or documents to the  
parties listed in the chart below:

**MOTION OF FIRST TEK, INC. TO COMPEL ENFORCEMENT OF SALE ORDER  
AND RELEASE OF FUNDS HELD BY CHAPTER 11 TRUSTEE AND FOR  
ENFORCEMENT EXPENSES IN CONNECTION THEREWITH**

3. I hereby certify under penalty of perjury that the above documents were sent using the  
mode of service indicated.

<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are (i) Cloudeeva, Inc., a Delaware corporation (Case No. 14-24874-KCF); and (ii) Cloudeeva, Inc., a Florida corporation (Case No. 14-24875-KCF).

Dated: February 5, 2016

/s/ Jerrold S. Kulback.  
JERROLD S. KULBACK

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